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 DAN GALBRAITH
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Ken Warren, KC – Chair and Former Bencher
Jodi Edmunds – Public Adjudicator
Moira Váně, KC – Bencher

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Clive Llewellyn – Counsel for Dan Galbraith

Hearing Dates

January 10, March 15 and April 22, 2024

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following three citations were directed to hearing by the Conduct Committee Panel on May 14, 2019:

    1) It is alleged Dan Galbraith failed to serve his client, L.W., in a conscientious and diligent manner on her professional disciplinary matter and that such conduct is deserving of sanction.

    2) It is alleged Dan Galbraith failed to respond to communications from another lawyer in a timely manner and that such conduct is deserving of sanction.

    3) It is alleged Dan Galbraith failed to serve his client, L.W., in a conscientious and diligent manner on her civil action and that such conduct Is deserving of sanction.

2. Mr. Galbraith was admitted as a member of the LSA on June 6, 1975. He was a general practitioner, practicing in the areas of civil litigation, family law, residential and commercial real estate, wills and estates, corporate law and criminal law. Mr. Galbraith

was administratively suspended effective July 3, 2019 for nonpayment of his LSA fees and failure to file his annual trust safety report. He remained administratively suspended at the time of the hearing in this matter. During the events in question, Mr. Galbraith was a sole practitioner.

3. On January 10, 2024, the Hearing Committee (Committee) convened a Hearing into the conduct of Mr. Galbraith, based on the above citations. The Hearing continued on March 15, 2024 and on April 22, 2024 argument was heard.

4. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Galbraith through his counsel, for the reasons set out below, the Committee finds Mr. Galbraith guilty of conduct deserving sanction on all three citations pursuant to section 71 of the *Legal Profession Act* (*Act*).

5. The Committee also finds that based on the facts of this case, and in accordance with section 72 of the *Act*, the appropriate sanction is a reprimand and payment of costs in the amount of $10,367.44, to be paid by April 22, 2025.

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Galbraith's conduct proceeded. Neither party raised any issue with the almost five-year delay from the direction of the citations and the start of the hearing and no explanation was provided.

Agreed Statement of Facts/Background

7. Mr. Galbraith and the LSA entered into a Statement of Admitted Facts dated August 11, 2023. Mr. Galbraith did not at any time admit that his conduct was deserving of sanction.

8. Mr. Galbraith was retained by L.W. to provide legal services with respect to two matters. The first was with respect to discipline proceedings against L.W. arising from a finding of unprofessional conduct by L.W. by her professional regulator. L.W. is an accountant. The second was with respect to assisting L.W. in defending a summary dismissal application and possibly settling a civil claim in what was then the Provincial Court of Alberta. The civil claim by L.W. and her corporation arose from water damage at condominiums owned by L.W. Citation 1 arises from the professional discipline matter and citations 2 and 3 arise from the civil matter.

9. There was apparent confusion between the parties as to the scope of Mr. Galbraith's retainers and as to when the retainers were completed. Mr. Galbraith did not provide any written retainer agreements to L.W. at any time. He also failed for the most part to confirm in writing his instructions, opinions, plans, expectations of his client, status of the matters he was handling and the termination or withdrawal of his services.

10. In the Statement of Admitted Facts, Mr. Galbraith admitted to a number of deficiencies in his services to L.W. that will be addressed in more detail below. However, in the Statement of Admitted Facts, his testimony and his counsel's argument, Mr. Galbraith refused to be accountable for deficiencies in his services. He was critical of L.W. for not showing more interest in her case from time to time and for not understanding what he felt he had clearly explained to her, notwithstanding that he did not document to L.W. his understanding. In his oral testimony, in response to a question from his counsel as to what Mr. Galbraith had admitted in the Statement of Agreed Facts, Mr. Galbraith replied that he had set out what he did or did not do and then said, "but you know, in my opinion, I didn't really do anything wrong." As was put by Mr. Galbraith in the Statement of Admitted Facts, the issue in his view was whether his conduct is reviewable by the Committee to determine what, if any, sanction for that conduct is required.

11. The Committee heard oral testimony from Mr. Galbraith and his former client, L.W., the complainant. Neither was a particularly strong witness. L.W. was born in Shanghai, China, and she came to Canada in 1990. She received her Certified General Accountant designation in 2000. L.W.'s proficiency with the English language was at times challenging and she often failed to directly answer straightforward questions. Mr. Galbraith was overly defensive about this conduct. Both witnesses' recollections were understandably challenged by the several years passage of time since the events in question.

12. The Committee will address the facts with respect to each of the citations in turn.

Citation 1

13. In May 2014, while represented by counsel other than Mr. Galbraith, L.W.'s professional association found her guilty of unprofessional conduct, with the sanction to be determined upon receiving further submissions. In July 2014, L.W. retained Mr. Galbraith to prepare and make submissions on sanction. He did that in October 2014. On February 5, 2015, the professional association's discipline tribunal emailed to L.W. and Mr. Galbraith a copy of the hearing decision that confirmed the findings of unprofessional conduct and imposed sanctions consisting of a 12-month suspension, a fine and an order for the payment of costs. Mr. Galbraith served L.W.'s professional association with a Notice of Appeal on March 9, 2015 and the appeal hearing was initially scheduled for June 9, 2015.

14. One of L.W.'s grounds of appeal was that the discipline tribunal had rejected her evidence and substituted its own opinion regarding the propriety of certain tax filings made by L.W. which were the subject of the complaint. Mr. Galbraith recommended that for purposes of the appeal, L.W. should obtain an independent expert opinion regarding the propriety of the tax filings. L.W. identified a chartered accountant she knew as a

potential expert. L.W. and Mr. Galbraith met with the chartered accountant, R.H., on June 3, 2015. L.W. agreed to provide R.H. with the documents and information he needed to prepare an expert report for the appeal and L.W. undertook to pay R.H.'s fees. Mr. Galbraith maintained that L.W. agreed to be solely responsible for timely finalization of the report. That view was not shared by L.W. who testified that she was to obtain the financial information required and Mr. Galbraith was to summarize the points that should, from a legal perspective, be addressed by R.H. Mr. Galbraith testified that he wanted to see the report before it was filed to review it from a legal perspective. L.W. testified that she, R.H. and Mr. Galbraith were each to play a part in producing the report.

15. On June 1, 2015, Mr. Galbraith sought an adjournment of the appeal hearing date to August 26, 2015 on the ground that he may want to introduce an expert report from a chartered accountant.

16. On July 30, 2015, L.W. emailed R.H. and Mr. Galbraith and enclosed some of the information R.H. required, indicating that she was still awaiting the balance of the information R.H. required from the complainants' former accountant. Mr. Galbraith did not respond to the July 30, 2015 email or take any other steps to ensure that the expert report was prepared in time for the August 26, 2015 appeal hearing.

17. On August 6, 2015, counsel for the regulator emailed Mr. Galbraith asking him to confirm his instructions with respect to the August 26, 2015 hearing. He did not respond. Counsel for the regulator emailed Mr. Galbraith again on August 17, 2015 asking for a courtesy of response but he did not respond.

18. A handwritten note from Mr. Galbraith indicates that on August 25, 2015 at 3:35 p.m. he telephoned R.H. and asked if he had prepared a report as Mr. Galbraith thought R.H. had not done so.

19. At the appeal hearing on August 26, 2015, Mr. Galbraith made an application for an adjournment, for an Order allowing fresh evidence in the form of an expert report and an Order directing the complainants' former accountants to provide certain information required for the expert report.

20. The appeal tribunal issued its decision on October 5, 2015, which was issued both to L.W. and Mr. Galbraith by email on October 6, 2015. The decision directed the complainants' former accountants to provide the information sought, granted L.W.'s adjournment request and permitted both parties to file expert reports and set the deadline for L.W.'s expert report as the earlier of December 15, 2015 or 35 days after receipt of the records from the complainants' former accountant. The complainants' former accountants provided the records to L.W. and Mr. Galbraith on October 7, 2015. That made the deadline for the filing of an expert report by L.W. to be November 12,

2015. Mr. Galbraith did not independently communicate to R.H. the November 12 deadline and Mr. Galbraith did not follow up with L.W. or R.H. to ensure that the expert report would be prepared and submitted by the November 12, 2015 deadline.

21. On November 16, 2015, the professional regulator emailed Mr. Galbraith and L.W. inquiring why it had not yet received the expert report by November 12.

22. Handwritten notes on Mr. Galbraith's file indicate that L.W. called him on November 18, 2015 and he returned the call, leaving a message on November 20, 2015. On November 19, 2015, Mr. Galbraith emailed L.W. and expressed his conclusion that R.H. was not able to provide an expert report. Mr. Galbraith told L.W. in an email that if R.H. intended to provide a report, Mr. Galbraith needed to know when it would be available.

23. A series of emails involving Mr. Galbraith, R.H., L.W. and the regulator between November 25, 2015 and December 31, 2015 culminated in no expert report ever being filed in support of L.W.'s appeal, summarized as follows:

- November 25: Mr. Galbraith emailed R.H., with a copy to L.W., asking R.H. whether he would be providing an expert report and indicating that his report had been due on November 12.

- November 25: R.H. replied to Mr. Galbraith indicating that no one informed him about the November 12 deadline and indicating he would "pass on this assignment".

- November 26: R.H. emailed Mr. Galbraith indicating that Mr. Galbraith was going to summarize the important points required to be addressed and that R.H. never received such a summary. R.H. also had no record of being asked to prepare a report by November 12. R.H. advised that at some point Mr. Galbraith had called him and asked whether he could appear the following day at a hearing, which R.H. could not accommodate on short notice. R.H. indicated that based upon these "surprise needs for action", he was not interested in being involved.

- November 26: Mr. Galbraith responded to R.H. indicating that it was Mr. Galbraith's recollection that L.W. was to provide the information R.H. required to prepare his report.

- November 27: Mr. Galbraith emailed R.H. to ask whether he would prepare a report and how much time he would require.

- December 1: R.H. replied to Mr. Galbraith indicating that he could draft a two or three page opinion and that he would need one week to complete the work once he had the necessary documentation.

- December 3: the regulator emailed Mr. Galbraith and L.W. to advise that the hearing could not be reconvened until March and requested dates from Mr. Galbraith.

- December 4: Mr. Galbraith emailed the regulator to provide March 2016 hearing dates and asked whether the tribunal would permit the filing of an expert report by L.W. by December 31. Mr. Galbraith emailed R.H. to advise that he had requested permission to file an expert report by the end of December and stated, "if the Appeal Tribunal permits a report to be filed at this time I will provide the assumptions and facts (also all relevant documents) on which you can give your opinion".

- December 11: the regulator emailed Mr. Galbraith and L.W. to advise that the tribunal had reluctantly agreed to allow the filing of L.W.'s expert report by December 31. It confirmed that it would not consider any reports from Mr. Galbraith that were received after December 31.

- December 28: at 4:25 a.m., Mr. Galbraith emailed R.H., with a copy to L.W., advising R.H. that the tribunal had allowed to December 31 to provide R.H.'s report. Mr. Galbraith asked R.H. whether he could provide a report if he received the necessary information that day or the next. Mr. Galbraith never provided any assumptions or facts to R.W.

- December 28: at 4:29 a.m., Mr. Galbraith emailed L.W. and asked her to call him as they needed to talk.

- December 29: R.H. emailed Mr. Galbraith to advise him that he could not complete his report in such a short time period, and he would have to pass on excepting the engagement. Mr. Galbraith replied and asked whether R.H. could provide a report by mid-January.

24. The appeal hearing took place on March 22, 2016 without the filing of any expert report on behalf of L.W. The tribunal reserved its decision. In a lunch meeting following hearing, L.W. brought up the topic of a further appeal. Mr. Galbraith maintained that he advised L.W. that he would not represent her if she wanted to bring a further appeal to the Court of Appeal and that she would have to file the Notice of Appeal with the Court of Appeal within 30 days following receipt of the appeal tribunal's decision. He never provided that advice in writing. L.W. stated that Mr. Galbraith told her that he would not act for her in an action against the regulator for damages, but she understood at that time that he remained her lawyer. She could not recall whether he told her that he would not act on a further appeal.

25. On May 26, 2016, the appeal tribunal upheld the findings of guilt and the sanction imposed by the discipline tribunal and requested submissions on costs of the appeal. The decision was sent to L.W. and Mr. Galbraith by email on June 21, 2016 and by registered mail on June 22, 2016. The decision requested that the costs submissions be submitted by June 30, 2016. On June 29, 2016 Mr. Galbraith requested an extension until July 19, 2016. L.W. testified that Mr. Galbraith failed to respond to emails from her in this period, leading her to contact the regulator directly in an effort to learn what was happening regarding the costs submissions. Mr. Galbraith submitted his costs submissions to the tribunal on July 26, 2016.

26. By correspondence dated September 9, 2016, the appeal tribunal's decision on costs was sent by courier separately to L.W. and to Mr. Galbraith. Mr. Galbraith received his copy on September 12, 2016. Mr. Galbraith considered his retainer at an end and other than forwarding his account to L.W., he did not correspond with her again respecting the disciplinary matter despite receiving emails from L.W. He did not advise L.W. that he considered his retainer to be at an end, confirm that L.W. had received the costs decision or confirm the deadline for a further appeal to the Alberta Court of Appeal.

27. L.W. maintained that she never received a copy of the costs decision until January 24, 2017, when she learned she had been suspended by her regulator for failing to comply with the tribunal's order. She had changed her address with the regulator in May of 2016 to one in Nova Scotia and the registered letter with the costs decision was sent to the Nova Scotia address where, according to L.W., someone other than L.W. signed for it and did not forward it to her. There was no evidence that L.W. told Mr. Galbraith that she was not at that address in September. L.W. emailed Mr. Galbraith on December 1, 2016 indicating that she had not heard any news from the regulator and asking whether Mr. Galbraith knew what was going on. Mr. Galbraith did not respond to that inquiry. L.W. testified that between the filing of the costs brief in July 2016 and December 1, 2016, and then between December 1, 2016 and January 24, 2017, she called Mr. Galbraith but he did not respond. L.W. further testified that on December 1, 2016 and January 24, 2017 she considered Mr. Galbraith to be her lawyer.

28. By email dated October 12, 2017, L.W. also asked Mr. Galbraith why he did not inform her when the Final Decision of Appeal was received in September of 2016, and he did not respond.

29. L.W. retained other counsel to proceed with a Notice of Appeal after the filing deadline. She was unsuccessful as her appeal was struck by the Court of Appeal for being filed beyond the time limit.

Citation 2

30. On March 25, 2014, on a self-represented basis, L.W. and her corporation commenced a civil action in what was then the Provincial Court of Alberta. The action was with

respect to water damages to condominiums owned by L.W. and her corporation. After a number of steps, on March 10, 2015, the Defendants, who were represented by their insurer's counsel, E.S., brought an application seeking summary dismissal of L.W.'s action. On the same day, L.W. retained Mr. Galbraith to represent her in the civil action to address the summary dismissal application. Mr. Galbraith did not enter into a retainer agreement with L.W. or otherwise confirm in writing the scope of his retainer.

31. On April 28, 2015, Mr. Galbraith made submissions at the summary dismissal application and was successful in having the application dismissed.

32. By a letter dated September 18, 2015, E.S. asked Mr. Galbraith whether "your client is agreeable to scheduling a settlement meeting".

33. By an email dated October 6, 2015, L.W. asked Mr. Galbraith to call the Defendants' insurance lawyer to settle the dispute for the condominiums as soon as possible.

34. By a letter dated October 16, 2015, E.S., referring to his earlier letters to Mr. Galbraith of September 18, 2015 and August 17, 2015, asked again if Mr. Galbraith's client was agreeable to schedule as settlement meeting and asked for Mr. Galbraith's availability.

35. Handwritten notes on Mr. Galbraith's file indicate that on November 3, 2015 he spoke to someone from E.S.'s office about four possible dates in late December. The notes further indicate that Mr. Galbraith advised that he had no trouble with an adjuster attending a meeting and that he would check plans and get back to E.S.'s associate the next day.

36. By email to L.W. dated November 19, 2015, Mr. Galbraith advised that he arranged to meet with the insurer's adjuster and lawyer in late January. Mr. Galbraith asked L.W. to remind him what the total repair costs were and indicated that they should likely submit a written proposal. That email also dealt with issues arising respecting the disciplinary matter.

37. By letter to Mr. Galbraith dated December 9, 2015, E.S. confirmed that a settlement meeting had been scheduled for January 29, 2016 at 10:00 a.m. at E.S.'s office.

38. A handwritten note on Mr. Galbraith's file dated January 28, 2016 at 2:18 p.m. indicates that Mr. Galbraith called E.S. and left a message that Mr. Galbraith would not be able to attend 10:00 a.m. settlement meeting the next day. The note also states that Mr. Galbraith's message advised E.S. that Mr. Galbraith would call the next week to reschedule. During his oral testimony, Mr. Galbraith was asked why he had cancelled the January 29, 2016 meeting and he had no recollection. Mr. Galbraith admitted that counsel for the Defendant wrote to him in an attempt to reschedule a settlement meeting on February 24, 2016, June 13, 2016, June 30, 2016 and August 9, 2016 and that

Mr. Galbraith did not respond to any of those communications. L.W. testified that she did not know whether the planned meeting had gone ahead or anything about rescheduling efforts. She testified that Mr. Galbraith did not forward to her the communications about rescheduling a settlement meeting.

39. The letters from E.S. to Mr. Galbraith indicate that E.S.'s assistant had also unsuccessfully made attempts to contact Mr. Galbraith.

Citation 3

40. The following facts are in addition to those specifically set out respecting citation 2 above.

41. By a letter dated September 20, 2016, E.S. served Mr. Galbraith with a Formal Offer to Settle L.W.'s action, offering to accept a discontinuance of action without costs. Mr. Galbraith did not forward the Formal Offer to L.W. or discuss it with her.

42. By email dated June 5, 2017, L.W. asked Mr. Galbraith whether he was going to settle the condominium damage claim with the insurer and if not whether she could book an appointment to pick up all the documents he has for her files.

43. By email dated September 6, 2017, L.W. asked Mr. Galbraith whether they should have lunch and talk to the Defendant's insurance lawyer as soon as possible to settle the case. L.W. testified that Mr. Galbraith did not respond.

44. By email dated October 12, 2017, L.W. again advised Mr. Galbraith that she would like to pick up her files respecting the condominium case.

45. On May 7, 2018, the Defendant in the condominium action swore an Affidavit, filed May 8, 2018, in support of an application to dismiss L.W.'s action for long delay.

46. The application materials were served on L.W. personally, although it is not clear of what date service was effected.

47. By email from L.W. to Mr. Galbraith dated May 24, 2018, she advised that she had received the insurer’s court document filed May 8, 2018 seeking an Order of Summary Judgment dismissing her claim for long delay. In her email, to which Mr. Galbraith did not respond, L.W.:

    - points out that the Defendant's evidence indicates that the Defendant's counsel faxed Mr. Galbraith on four occasions to arrange a settlement meeting and that he never responded;

- expresses the view that Mr. Galbraith was her lawyer of record for the action and that she cannot retain other counsel until he formally withdraws;

- asks why Mr. Galbraith did not complete the work that he was retained to do, which was to settle the case;

- advises that she will be seeking restitution from Mr. Galbraith's firm for her losses; and

- asks Mr. Galbraith to withdraw formally so she can retain another lawyer.

48. It appears that on May 18, 2018, L.W. advised E.S. that she had retained other counsel. However, by a responding email on the same date, E.S. advised L.W. that it was still not clear whether or not Mr. Galbraith still represented her, and E.S. asked L.W. to confirm whether or not Mr. Galbraith is still her counsel.

49. The Defendant's application was returnable July 10, 2018.

50. By email dated May 28, 2018, L.W. again advised E.S. that another person, M.I., a non-lawyer property manager, was authorized to settle the file for her.

51. By email dated May 29, 2018 from E.S. to L.W. and copied to Mr. Galbraith, E.S. again asked L.W. to confirm whether or not Mr. Galbraith acts for her. E.S. points out that she cannot communicate with L.W., or anyone else on her behalf, while she has counsel.

52. By email dated July 10, 2018 at 12:35 p.m., Mr. Galbraith advised L.W. that he had arranged for the Defendant’s application that afternoon to be adjourned.

53. By email dated July 10, 2018, at 2:47 p.m., from E.S. to L.W., and copied to Mr. Galbraith, E.S. indicated that L.W. had in fact been in attendance at the court application and that some costs were assessed against her.

54. By email dated July 13, 2018, at 12:36 p.m., from Mr. Galbraith to E.S., and copied to L.W., Mr. Galbraith states: "I gather your application was not adjourned as I had requested (presumable to L.W. being in attendance at Court) and would ask that you let me know what in fact transpired". E.S. responded a few minutes later by email to Mr. Galbraith, and copied to L.W., indicating that L.W. appeared in Court and the application was adjourned sine die at L.W.'s request. The Court also ordered that if L.W. and her corporation wished to file an affidavit in response to the application they are required to pay costs to the Defendants in the amount of $250.00 by July 31, 2018, failing with the application would be rescheduled with no evidence from the Plaintiffs being permitted.

55. By email dated July 17, 2018, L.W. forwarded to Mr. Galbraith a letter dated July 13, 2018 on the letterhead of […] Alberta Ltd. (L.W.'s corporation and co-plaintiff) and signed by L.W. The letter advised that:

- L.W. was already in Court when she received Mr. Galbraith's email at 12:35 p.m. on July 10, 2018;
- it was stated on the record during the court proceedings on July 10, 2018 that Mr. Galbraith had contacted E.S. at 12:30 p.m. requesting that the matter be adjourned and that E.S. had declined the request;
- L.W. had no alternative but to appear at Court personally as Mr. Galbraith had failed to withdraw as counsel and E.S. would therefore not deal with her directly;
- L.W. anticipated difficulty preparing an affidavit in response as only Mr. Galbraith knew the reason for his failure to respond to E.S.'s attempts to schedule a settlement meeting; and
- L.W. intended to copy the letter to the LSA and she asked Mr. Galbraith to advise as soon as possible of his intentions.

56. By email dated July 25, 2018, L.W. asked Mr. Galbraith to please respond to the email she sent to him on July 19, (sic) 2018 because her deadline to pay the costs was the end of the month.

57. By email dated July 30, 2018, L.W. again asked Mr. Galbraith to respond to her July 19 (sic), 2018 email by noon.

58. By a letter dated August 20, 2018, E.S. served Mr. Galbraith with the Defendant's application returnable October 2, 2018 at 1:30 p.m.

59. By a letter dated October 2, 2018, Mr. Galbraith wrote to E.S. and advised her that Mr. Galbraith would not be in court that afternoon for the application. Mr. Galbraith stated, "while I have not filed and served a Notice of Withdrawal I am no longer acting for L.W.". Mr. Galbraith also indicated he did not know whether E.S. had served the application materials on L.W. personally but Mr. Galbraith indicated that he had mailed a copy of the application to L.W. on August 21, 2018 and had not had a response from her.

60. The Defendant's application to dismiss L.W.'s action for long delay was allowed on October 2, 2018 and L.W. was ordered to pay $400.00 in costs.

Analysis and Decision on the Citations

61. Section 49(1) of the *Act* provides:

> 49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
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> (a) is incompatible with the best interest of the public or the member of the Society, or
>
> (b) tends to harm the standing of the legal profession generally,
>
> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

62. Conduct of a lawyer that breaches the provisions of the LSA Code of Conduct (Code) may be incompatible with the best interests of the public or the members of the LSA or may tend to harm the standing of the legal profession generally. Citations 1 and 3 relate to the alleged failure of Mr. Galbraith to serve his client in a conscientious and diligent manner. Provisions of the Code that address competence include:

> 3.1-1 In this rule
> "competent lawyer" means the lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including
>
> …
>
> (d) communicating with the client at all relevant stages of a matter in timely and effective manner;
>
> (e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;
>
> …
>
> 3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.
>
> 3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.
>
> 3.2-2 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the

lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

3.7-7 On discharge or withdrawal, a lawyer must:
(a) notify the client in writing, stating:
(i) the fact that the lawyer has withdrawn;
(ii) the reasons, if any, for the withdrawal…

63. Some of the commentary to the foregoing provisions of the Code are also instructive in this case.

64. The commentary to Rule 3.1 includes:

> This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule However, evidence of gross neglect in a particular manner or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

65. The commentary to Rule 3.2 provides that Rule 3.2 regarding quality of service must be read and applied in conjunction with Rule 3.1 regarding competence. Commentary 5 provides examples of expected practices that include:

a) keeping a client reasonably informed;

b) answering reasonable requests from a client for information;

c) responding to a client's telephone calls and emails;

d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;…

e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

f) answering, within a reasonable time, any communication that requires a reply;

…

l) making a prompt and complete report when the work is finished or, if the final report cannot be made, providing an interim report when one might be reasonably expected;…

66. Commentary 6 to Rule 3.2 states that "[w]hether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client".

67. Commentary 2 to Rule 3.7-1 states that "[a]n essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts".

68. The LSA referred the Committee to two authorities: *Law Society of Alberta v. Hnatiuk*, 2013 ABLS 22 and *Law Society of Alberta v. Kobylnyk*, 2023 CanLII 86095(ABLS).

69. In *Hnatiuk,* the member admitted to facts and admitted guilt to conduct deserving of sanction. The misconduct of Ms. Hnatiuk was similar in many respects to that of Mr. Galbraith. That hearing committee found that: the member's communication with her client was grossly inadequate; she failed to protect her client from dire consequences; she failed to keep her client informed; she displayed a certain disregard to her obligations to her client; and she lacked accountability for creating solutions to her client's issues.

70. In *Kobylnyk*, the member faced 21 citations, one of which was that he had failed to respond in a timely manner to communications from another lawyer. Mr. Kobylnyk failed to respond in one instance for six months and in a second instance for almost three months. That hearing committee found the member guilty of conduct deserving of sanction in respect of that citation, and others.

71. A description of conduct of Mr. Galbraith relevant to each of the citations follows.

Citation 1

72. Mr. Galbraith's failure to serve his client in a conscientious and diligent manner on the professional disciplinary manner includes the following:

a) Mr. Galbraith did not enter into a written retainer agreement, contrary to the commentary to section 3.6-1 of the Code;

b) Mr. Galbraith did not document his and L.W.'s respective responsibilities with respect to obtaining an expect report from R.H., leading to ongoing confusion between him, L.W. and Mr. Galbraith;

c) Mr. Galbraith did not respond to L.W.'s July 30, 2015 email or take any other steps to ensure that the expert report would be prepared in time for the August 26, 2015 appeal hearing;

d) Mr. Galbraith did not respond to the August 6, 2015 and August 17, 2015 emails from counsel for the regulator with respect to the scheduled August 26, 2015 hearing;

e) Mr. Galbraith only inquired of R.H. with respect to the status of the expert report on the afternoon prior to the scheduled hearing;

f) After receipt of the appeal tribunal's decision on October 5, 2015, Mr. Galbraith did not communicate with L.W. or R.H. to ensure that the expert report would be prepared and submitted by the November 12, 2015 deadline;

g) By email dated December 4, 2015, Mr. Galbraith advised R.H. and L.W. that Mr. Galbraith was asking the regulator whether they could file an expert report by the end of the month and stated that if the appeal tribunal permitted a report to be filed at this time, Mr. Galbraith will provide the assumptions and facts (also all relevant documents) on which R.H. could give his opinion. Mr. Galbraith never did so even though the regulator advised Mr. Galbraith by email dated December 11, 2015 that it would allow the filing of an expert report by December 31, 2015;

h) Mr. Galbraith did not advise R.H. of the December 31, 2015 deadline for the filing of an expert report until late in the afternoon on December 28, 2015. R.H. refused to act and no expert report was ever filed on behalf of L.W.

i) Although Mr. Galbraith maintained that at a lunch meeting with L.W. on March 22, 2016, after the appeal hearing with the regulator, he advised L.W. that he would not act for her on any further appeal to the Court of Appeal, that limitation was never documented and there was confusion with L.W. about the scope of Mr. Galbraith's retainer;

j) When Mr. Galbraith received the appeal tribunal's decision on costs on September 9, 2016, he made no effort to communicate with L.W. about the implications of that decision, the appeal period arising from that decision or that he would not represent L.W. on any such appeal. He did not notify L.W. that he considered his retainer to be terminated; and

k) When L.W. emailed Mr. Galbraith on December 1, 2016 to ask him whether he had any news from the regulator and to essentially ask Mr. Galbraith for a status

report, he did not respond. His explanation, that he had no reason to believe that L.W. had not received the decision, is inconsistent with the very nature of his client's inquiry, the essence of which is that she is unaware of the decision.

73. Mr. Galbraith's services were performed in a lackadaisical manner, with indifference to his obligations under the Code and L.W.'s ignorance of the services she was reasonably entitled to expect from a competent lawyer in these circumstances.

Citation 2

74. Although Mr. Galbraith at times suggested that he had a limited scope retainer with L.W. that required him only to defend L.W. on the Defendants' summary dismissal application, he did not comply with any of the requirements set out in Rule 3.2-2 of the Code regarding limited scope retainers:

> Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

75. By the fall of 2015, it was clear that L.W. had asked Mr. Galbraith to settle her civil claim and he had accepted that retainer. Mr. Galbraith in fact communicated with the opposing counsel and scheduled a settlement meeting but inexplicably cancelled the day before it was set to proceed and made no efforts to reschedule it. Mr. Galbraith admitted that he did not respond to four communications from opposing counsel, E.S., over the period February 24, 2016 to August 9, 2016, seeking to reschedule a meeting. Mr. Galbraith did not respond in a timely manner as he did not respond at all.

Citation 3

76. Mr. Galbraith's failure to serve his client in a conscientious and diligent manner on her civil action manner includes, in addition to the conduct set out above under citation 2, the following:

a) Mr. Galbraith did not enter into a written retainer agreement that outlined the scope of his services;

b) There is no evidence that Mr. Galbraith ever provided an opinion respecting liability, quantum of damages or a reasonable settlement position;

c) Mr. Galbraith did not forward the Defendants' formal offer to settle to L.W., contrary to his obligation pursuant to commentary 3 to Rule 3.2-4 of the Code;

d) Mr. Galbraith did not report to L.W. about the numerous attempts of the Defendants' insurer to contact Mr. Galbraith to reschedule a settlement meeting;

e) In the fall of 2017, L.W. twice asked Mr. Galbraith about picking up her files from him. He did not cooperate in that regard and also did not take any steps to formally withdraw from the matter;

f) In the spring of 2018, after service of the Defendants' application to dismiss the action for long delay, L.W. again asked Mr. Galbraith to formally withdraw from the case so that she could retain other counsel. Mr. Galbraith did not do so and in fact his only advice to the Defendants' counsel advising that Mr. Galbraith was withdrawing was on October 2, 2018, the date of the application itself;

g) On July 10, 2018, shortly before the application was originally to proceed, Mr. Galbraith advised L.W. that he had arranged the matter to be adjourned, when that was not the case;

h) Mr. Galbraith did not respond to L.W.'s emails of July 17, 25 and 30, 2018; and

i) From January 28, 2016 (when Mr. Galbraith adjourned the settlement meeting) until October 2, 2018 (when Mr. Galbraith finally withdrew), Mr. Galbraith did nothing to advance L.W.'s action. There is no evidence that Mr. Galbraith entered a limitation for a potential long delay application, advised L.W. of the law concerning long delay and a Plaintiff's obligation to advance an action or recommended to L.W. that steps be taken to reset the long delay clock.

77. The quality of service provided by Mr. Galbraith to L.W. respecting her civil action was grossly inadequate. The small amount of money involved in the claim was immaterial to the quality of service required to be provided by Mr. Galbraith to L.W. Mr. Galbraith pointed to L.W.'s apparent lack of interest from time to time in that she failed to contact Mr. Galbraith for long periods. A conscientious and diligent lawyer would have impressed upon their client their obligations as a Plaintiff to advance their action and the serious consequences arising from their failure to do so. Having accepted a retainer to settle the action, or at least to take steps to attempt to do so, Mr. Galbraith's obligation was to take reasonable steps in that regard. There is no evidence that he was in any way thwarted from advancing settlement talks due to the actions or inactions of L.W. He inexplicably ignored the file and his obligations as counsel.

78. On the totality of the evidence, the Committee finds that the services provided by Mr. Galbraith to L.W. in relation to the civil action were substantially below those reasonably expected to be provided by a competent lawyer. He failed to serve L.W. conscientiously and diligently and he admitted to failing to respond to communications from another lawyer in a timely manner. Mr. Galbraith seemed to feel that the deficiencies in his services were trivial or immaterial because they in his view did not directly cause harm to his client. That argument is untenable where, as here, there is a pattern of neglect and mistakes that demonstrated lack of a concern for the client`s best interests. In addition,

the client did in fact suffer harm as her action was dismissed for long delay and costs were assessed against her.

79. The Committee finds that the three citations have each been proven on a balance of probabilities and that Mr. Galbraith's conduct is deserving of sanction.

Analysis and Decision on Sanction

Reprimand

80. The Committee advised the parties at the Hearing that the citations had been proven and that written reasons would follow. Counsel were asked whether they were prepared to speak to sanction immediately or whether there was a need to schedule a sanction hearing. Discussions led to an agreement between counsel and the Committee that a reprimand was the appropriate sanction, with costs to be spoken to by further written submissions.

81. Although the agreement on sanction was reached following a contested hearing, the Committee has reviewed the agreed sanction under the principles applicable to a joint submission on sanction tendered with an admission of guilt.

82. A hearing committee is required to show deference to a joint submission on sanction but is not bound by it. When a hearing committee is presented with a joint submission on sanction, its analysis is not to determine the correct sanction in the hearing committee's view. Rather, the hearing committee is to determine whether the proposed sanction is within a range of possible sanctions that would satisfy the "public interest" test flowing from the decision of the Supreme Court of Canada in *R. v. Anthony-Coo*k (2016 SCC 43) and following cases. The public interest test requires that a decision maker should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to public interest. The following questions should be considered by a hearing committee in applying the public interest test:

    a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the conduct and discipline system?

    b) Would the joint submission cause an informed and reasonable public to lose confidence in the regulator?

    c) Is the joint submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting

certainty in resolution discussions, to believe that the proper functioning of the conduct and discipline system had broken down?

83. The Court of Appeal for Saskatchewan very recently considered in a lawyer disciplinary case the deference to be shown to a joint submission on sanction.[1] Citing authority, the Court described the deference threshold as meaning that the sentence must be so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system" and the sentencing judge should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

84. The LSA's Pre-hearing and Hearing Guideline (Guideline) at paragraph 198 notes that the prime determinant of the appropriate sanction is the seriousness of the misconduct and that the seriousness of the misconduct may be determined by various factors, some of which include:

a) The degree to which the misconduct constitutes a risk to the public;

b) The degree to which the misconduct constitutes a risk to the reputation of the legal profession;

…

(e) The potential impact on the Law Society's ability to effectively govern its members by such a misconduct;

(f) The harm caused by the misconduct;

(g) The potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would likely have resulted in the lawyer's misconduct;

(h) The number of incidents involved; and

(i) The length of time involved.

85. Section 72 of the *Act* permits a hearing committee, following a finding that a member is guilty of conduct deserving of sanction, to order disbarment, a suspension or a reprimand. In addition, the hearing committee may impose practice restrictions or

[1] *Xiao-Phillips v. Law Society Saskatchewan,* 2024 SKCA 44 at paragraphs 146-147

review, order payment of a penalty and order payment of all or part of the costs of the proceedings.

86. Disbarment is not a realistic option here and a suspension is also unwarranted, particularly as Mr. Galbraith has been administratively suspended for almost five years. The Committee finds that a reprimand is the appropriate sanction and satisfies the public interest test.

87. The Committee delivers the following reprimand to Mr. Galbraith:

> Mr. Galbraith, you have been found guilty of the three serious citations, in two separate matters of failing to serve your client in a conscientious and diligent manner, and in failing to respond to communications from another lawyer. At the time of your misconduct, you had practiced for over 40 years without attracting any discipline record. That is a record of which you can be proud. However, you admitted that you failed to respond to communications from another lawyer in a timely manner and the Committee has found the quality of your services provided to L.W. were performed in lackadaisical manner and were grossly inadequate. The Committee was surprised and disappointed by your intransigent defensiveness and refusal to be accountable for your misconduct. The Committee would expect that any experienced member for the Bar who reviewed the facts admitted by you would conclude that the client was not served in a conscientious and diligent manner.
>
> You have not practiced for almost five years and the Committee does not know whether you will ever practice again. It acknowledges that this is a sad blemish to the conclusion of a lengthy professional career. The Committee also acknowledges that there were some challenges with this particular client both in terms of language issues and attention to the matters. Those challenges heightened your obligations as a competent lawyer and you failed to respond as required.
>
> A reprimand is meant to express the profession's denunciation of a lawyer's conduct. In the case of a lawyer who continues to practice, it is also meant to guide future conduct. That does not appear to be a factor here.
>
> For the reasons set out in the Committee's decision, your conduct fell markedly below the expected standard of a competent lawyer. It reflects poorly on you and our profession.

Costs

88. Counsel for the LSA provided submissions on costs dated May 10, 2024 and counsel for Mr. Galbraith responded with submissions on June 5, 2024. The LSA tendered an estimated statement of costs in the amount of $13,823.25, $10,893.75 of which was generated by 126.8 hours of LSA counsel's time at $125.00 per hour. The balance consisted of court reporter charges and per diem hearing expenses.

89. The LSA submitted that there should be a costs award against Mr. Galbraith and that the counsel hours in the statement of costs were reasonable but did not state a costs amount. The LSA did not object to an order providing Mr. Galbraith 'with time' to pay any costs award but again did not provide any guidance as to what length of time might be reasonable.

90. Mr. Galbraith's counsel conceded that a costs award is warranted but submitted that Mr. Galbraith should not be ordered to pay all of the hearing costs on the ground of his 'overall cooperation' in the conduct process. Mr. Galbraith did cooperate in entering into the Statement of Admitted Facts but he failed to admit that his admitted conduct, that contained some obvious misconduct as set out above, was deserving of sanction. Mr. Galbraith sought to have the Committee review just the Statement of Admitted Facts and decide if the conduct was deserving of sanction. The Committee agrees with the LSA's submission that in the absence of an admission of guilt it was necessary to call L.W. as a witness so that evidence of her relationship and dealings with Mr. Galbraith could be considered by the Committee. Mr. Galbraith's counsel extensively cross-examined L.W and led further evidence from Mr. Galbraith in chief, each an unnecessary step if L.W.'s evidence in chief was not considered by Mr. Galbraith to require a response not found in the Statement of Admitted Facts. The Committee finds that the hearing of oral evidence was required in the face of Mr. Galbraith's decision to not admit guilt to any of the citations.

91. In their costs submissions, LSA counsel referred the Committee to a number of decisions of the Court of Appeal of Alberta dealing with costs in professional discipline cases.

92. In *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336, the Court considered an appeal by a dentist of a disciplinary decision by the College's appeal panel finding her guilty of unprofessional conduct and ordering a sanction consisting of a reprimand, completion of an ethics course, payment of hearing tribunal costs in the amount of $37,500.00 and payment of one-quarter of the appeal panel costs. The professional college was under the ambit of the *Health Professions Act*, RSA 2000, c. H-7. The Court set aside the Order that the dentist pay the costs of the investigation and hearing. The Court directed those matters to be reconsidered by the College's appeal panel for determination in accordance with the principles set out in the Court's decision.

93. In *Jinnah*, the Court held that it is the profession as a whole, not just a disciplined member, that benefits from the privilege of self-regulation. The costs of conducting discipline proceedings were viewed as an inevitable part of self-regulation. The Court held that the imposition of all or a significant percentage of the costs of self-regulation on the profession as a whole was fair because all members benefit from self-regulation. The Court held that as a general principle, it would be appropriate to impose a significant portion of the costs of an investigation into and hearing of a complaint on a disciplined dentist only if there was a compelling reason to do so. The Court outlined what it considered to be the four compelling reasons to depart from the general rule:

1) a dentist who engages in serious unprofessional conduct;

2) a dentist who is a serial offender who engages in unprofessional conduct on two or more occasions;

3) a dentist who fails to cooperate with the college investigators and forces the college to expend more resources than is necessary to ascertain the facts related to a complaint; and

4) a dentist who engages in hearing misconduct, being behavior that unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable.

94. The Court concluded that in most cases of unprofessional conduct, the profession as a whole should bear the costs of the discipline process. This represented a significant shift from the previous position of the Court.

95. The *Jinnah* decision was considered by an appeal panel of the Benchers (consisting of seven Benchers) in *Law Society of Alberta v. Beaver*, 2023 ABLS 4. Mr. Beaver was found guilty by a hearing committee of unprofessional conduct resulting in his disbarment and an order to pay costs in the amount of $120,000.00, representing about 75% of the total costs. Coincidentally, Mr. Beaver's counsel on the appeal represented Dr. Jinnah on his appeal. The appeal panel held that the Court of Appeal's decision in *Jinnah* was applicable only to professionals regulated by the Alberta *Health Professions Act*.

96. In *Tan v. Alberta Veterinary Medical Association*, 2024 ABCA 94, the Court considered an appeal by the veterinarian of findings of unprofessional conduct. The hearing tribunal ordered that Mr. Tan pay 20% of the costs of the investigation and initial hearing. The College's appeal panel (Committee of Council) upheld the findings on the merits and on sanction and ordered the veterinarian to pay about 50% of the appeal costs. The proceedings were conducted under the *Veterinary Professions Act*, RSA 2000, c. V-2, which is not encompassed under the Alberta *Health Professions Act*. At paragraph 34 of its decision, the Court of Appeal panel (that included one member who had been part of the *Jinnah* panel) characterized the *Jinnah* decision as confirming that "professional

regulatory bodies should not automatically order costs against a member, even where allegations are sustained. The decision-maker must consider both whether a costs award is appropriate and if so, the quantum". The Court of Appeal's holding made it clear that *Jinnah* was not restricted to professions regulated under the Alberta *Health Professions Act*.

97. Importantly, at paragraph 35 of its decision, the Court of Appeal relied not upon *Jinnah* but on its earlier decision in *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313, in holding:

> We agree with the appellant that even where it is appropriate to order costs against a member, the Hearing Tribunal and the Committee of Council must consider the appropriate quantum in all respects, including which expenses the member should be partially responsible for, whether the expenses incurred were for reasonable steps in reasonable amounts, what portion is chargeable to the member and whether the end result is reasonable.

98. The Court of Appeal's reliance on *Alsaadi* rather than *Jinnah* is instructive. In *Alsaadi*, Justice Khullar (now Chief Justice of the Court of Appeal of Alberta) stated at paragraph 94 that the Court's approach to costs in the disciplinary process of self-regulated professions was set out in *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 2053, as follows:

> The fact that the **Act** and **Regulation** permit the recovery of all hearing and appeal costs does not mean that they must be ordered in every case. Costs are discretionary, with the discretion to be exercised judicially… Costs awarded on a full indemnity basis should not be the default, nor, in the case of mixed success, should costs be a straight mathematical calculation based on the number of convictions divided by the number of charges. In addition to success or failure, a discipline committee awarding costs must consider such factors as the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts. Costs are not a penalty, and should not be awarded on that basis. When the magnitude of a costs award delivers a crushing financial blow, it deserves careful scrutiny: … If costs awarded routinely are exorbitant they may deny an investigated person a fair chance to dispute allegations of professional misconduct;… Costs are often treated as an afterthought and an inevitability in professional discipline matters under the *Health Professions Act*.

99. Justice Khullar noted that the approach taken by many hearing tribunals was to calculate the total maximum expenses related to the hearing and then to order a percentage of that amount to be paid by the unsuccessful professional. She referred to a number of

decisions in which the costs ordered to be paid by the professional were in the range of 60 to 75% of the total costs. Justice Khullar summarized the approach to costs at paragraph 120:

> A more deliberate approach to calculating the expenses that will be payable is necessary. Factors such as those described in *K.C.* should be kept in mind. A hearing tribunal should first consider whether a costs award is warranted at all. If so, then the next step is to consider how to calculate the amount. What expenses should be included? Should it be the full or partial amount of the included expenses? Is the final amount a reasonable number? In other words, a hearing tribunal should be considering all the factors set out in *K.C.*, in exercising its discretion of whether to award costs, and on what basis. And of course, it should provide a justification for its decision.

100. The Alberta Court of Appeal's approach to costs in discipline proceedings involving professionals seems to have come full circle through the decisions of a number of panels of the Court over the past three years:

- *K.C. v. The College of Physical Therapists of Alberta*, 1999 ABCA 253 – August 23, 1999 – The factors to be considered are set out above in paragraph 96.
- *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313 – September 17, 2021 – Confirmed the application of the *K.C.* factors.
- *Tan v. Alberta Veterinary Medical Association*, 2022 ABCA 2021 [Tan 1] – June 17, 2022 – The court cited *Alsaadi* and *K.C.* factors.
- *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336 - October 13, 2022 – The court held that a professional should not be charged with a significant portion of the costs of an investigation and hearing unless one or more of four enumerated compelling reasons applied.
- *Tan v. Alberta Veterinary Medical Association*, 2024 ABCA 94 [Tan 2] – March 19, 2024 – The court referenced *Jinnah* as deciding that a professional regulatory body should not automatically order costs against a member, even where allegations are sustained, but it cited *Alsaadi* and applied the *K.C.* factors in assessing costs.

101. The Committee is of the view that the *K.C*. factors apply, as submitted by Mr. Galbraith's counsel, and that a partial costs award against Mr. Galbraith is appropriate in the circumstances here. With respect to the factors in *K.C.*:

a) Mr. Galbraith has been found guilty on all three citations;

b) Mr. Galbraith's failure to serve his client conscientiously and diligently and his failure to respond to communications from another lawyer represent serious

misconduct, albeit at the lower end of the range. In *Jinnah*, in describing what would constitute serious unprofessional conduct, the Committee included the performance of services in a manner that is a marked departure from the ordinary standard of care[2]. The Committee finds that Mr. Galbraith's conduct clearly demonstrates a marked departure from the ordinary standard of care;

c) While Mr. Galbraith admitted numerous facts that have been found to constitute misconduct deserving of sanction, he steadfastly refused to admit that his conduct was deserving of sanction, thereby increasing the length and costs of the proceeding; and

d) The estimated statement of costs is in the Committee's view very reasonable. The counsel fees are based on a rate of $125 per hour, a rate that is 25 years old. That hourly rate is unrealistically low when compared against the current rates for legal services in the Alberta marketplace. The Committee urges the LSA to consider an increase to the prescribed LSA counsel rate that would more appropriately reflect the value of those services and their costs to the LSA and its members.

102. The Committee notes that in the LSA's submissions on costs it submitted that Mr. Galbraith's misconduct may be considered to fall within the serious misconduct and serial offender exceptions set out in *Jinnah*. As stated above, the Committee agrees that Mr. Galbraith's conduct may be considered to be serious professional misconduct, but it disagrees that the serial offender exception applies. Multiple instances of misconduct that are all considered with respect to a single citation, or multiple citations from the same factual matrix, do not constitute serial offences. The serial offender exception was described in *Jinnah* as follows:

> Second, a dentist who is a serial offender engages in unprofessional conduct on two or more occasions may be ordered to pay some costs. If a dentist is guilty of two acts of unprofessional conduct and both of the findings of unprofessional conduct were serious breaches, a costs order indemnifying the College for a substantial portion or all of its expenses would be appropriate… There is a big difference between a dentist who has been sanctioned once and a dentist who has been sanctioned two or more times. A dentist who has been sanctioned once should be extra vigilant in how he or she practices dentistry. It seems to us, based on our review of the College's 2019, 2020 and 2021 annual reports and the decisions finding unprofessional conduct published on the College's website, that only a very small percentage of dentists engaged in active practice have every been sanctioned. And of this group, we strongly suspect that an even smaller fraction are repeat offenders. It is not unfair

[2] *Jinnah,* para. 141

to place on the shoulders of this small group of dentists a disproportionate share of the costs of implementing the discipline process.[3]

103. Mr. Galbraith is not a repeat offender and his conduct has not been sanctioned previously. The three citations before the Committee all arise from the same factual matrix, involve a single client and have resulted in a single sanctioning process. In these circumstances, Mr. Galbraith is not a serial offender for purposes of the *Jinnah* exceptions.

104. Mr. Galbraith is ordered to pay 75% of the estimated statement of costs, in the amount of $10.367.44. Having regard to the fact that Mr. Galbraith has not practiced for almost five years, the Committee orders that the costs shall be paid by April 22, 2025.

Concluding Matters

105. In summary, the Committee finds Mr. Galbraith guilty of conduct deserving of sanction with respect to all three citations and orders a sanction comprising of a reprimand and payment of costs in the amount of $10,367.44, to be paid by April 22, 2025.

106. No notice to the Attorney General is required.

107. No Notice to the Profession is required.

108. 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. Galbraith will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated July 3, 2024.

Ken Warren, KC

Jodi Edmunds

Moira Váně, KC

[3] *Jinnah,* para. 142