

**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 DAVID KOBLYNYK
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Bud Melnyk, KC – Chair and Bencher
Levonne Louie – Lay Bencher
Sanjiv Parmar – Bencher

Appearances

Shane Sackman – Counsel for the Law Society of Alberta (LSA)
David Kobylnyk – Self-represented

Hearing Dates

March 8, 2023 and April 4, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

OVERVIEW

1. The following citations, based on six complaints (Complaints) were directed to hearing by the Conduct Committee Panel on August 20, 2019 and June 16, 2020:

Complaint #1

- 1) It is alleged that David W. Kobylnyk failed to respond in a timely manner to communications from another lawyer, M.M., and that such conduct is deserving of sanction;
- 2) It is alleged that David W. Kobylnyk failed to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;
- 3) It is alleged that David W. Kobylnyk breached an undertaking to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;

- 4) It is alleged that David W. Kobylnyk signed a Consent Order on behalf of his client, S.K., without proper instructions and that such conduct is deserving of sanction;

Complaint #2

- 5) It is alleged that David W. Kobylnyk failed to serve his client, A.S.L., and that such conduct is deserving of sanction;
- 6) It is alleged that David W. Kobylnyk failed to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;
- 7) It is alleged that David W. Kobylnyk breached an undertaking to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;

Complaint #3

- 8) It is alleged that David W. Kobylnyk failed to promptly meet financial obligations in relation to his practice, and that such conduct is deserving of sanction;
- 9) It is alleged that David W. Kobylnyk failed to respond in a timely manner to communications from another professional, and that such conduct is deserving of sanction;
- 10) It is alleged that David W. Kobylnyk failed to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;
- 11) It is alleged that David W. Kobylnyk breached an undertaking to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;

Complaint #4

- 12) It is alleged that David W. Kobylnyk failed to serve his client, J.G., and that such conduct is deserving of sanction;
- 13) It is alleged that David W. Kobylnyk acted while in a conflict or potential conflict of interest without obtaining the consent of his client, J.G. or in circumstances where it was not in the best interest of J.G. that he do so, and that such conduct is deserving of sanction;
- 14) It is alleged that David W. Kobylnyk failed to obtain instructions from his client, J.G., on all matters not falling within his express or implied authority and that such conduct is deserving of sanction;

- 15) It is alleged that David W. Kobylnyk failed to be candid with his client, J.G., and that such conduct is deserving of sanction;
- 16) It is alleged that David W. Kobylnyk failed to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;
- 17) It is alleged that David W. Kobylnyk breached an undertaking to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;

Complaint #5

- 18) It is alleged that David W. Kobylnyk failed to comply with Rule 119.34 and that such conduct is deserving of sanction;
- 19) It is alleged that David W. Kobylnyk failed to promptly respond to and cooperate with the Law Society of Alberta and that such conduct is deserving of sanction;
- 20) It is alleged that David W. Kobylnyk breached an undertaking to promptly respond to and cooperate with the Law Society of Alberta and the such conduct is deserving of sanction; and

Complaint #6

- 21) It is alleged that David W. Kobylnyk failed to promptly meet financial obligations in relation to his practice, and that such conduct is deserving of sanction.

PRELIMINARY MATTERS

2. 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. Kobylnyk's conduct proceeded.

FINDINGS OF HEARING COMMITTEE

3. On March 8, 2023, the Hearing Committee (Committee) convened a hearing (Hearing) into the conduct of David Kobylnyk based on the 21 citations.
4. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Kobylnyk, for the reasons set out below, the Committee finds David Kobylnyk guilty of conduct deserving sanction on citations 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, and not guilty on citation 4 pursuant to section 71 of the *Legal Profession Act (Act)*.

BACKGROUND

5. Mr. Kobylnyk was admitted as member of the LSA on February 11, 2000. Mr. Kobylnyk's practice included various types of matters, including civil litigation, real estate, matrimonial/family law and criminal law. Following his articles Mr. Kobylnyk worked as an associate at two firms for about five years, followed by one year as in-house counsel. In October 2008 Mr. Kobylnyk started his own firm as a sole practitioner.
6. On July 24, 2018 the LSA issued seven citations against Mr. Kobylnyk and the hearing into those citations took place on May 6, 2019 (May 2019 Hearing). At the May 2019 Hearing, Mr. Kobylnyk admitted to conduct deserving of sanction on each of these seven citations. That hearing committee suspended Mr. Kobylnyk for two months effective August 1, 2019 and Mr. Kobylnyk continues to remain suspended at the date of this Hearing.

PRELIMINARY APPLICATIONS

7. On the March 8, 2023 Hearing date Mr. Kobylnyk made the following preliminary applications:
 - a) That this Hearing was *res judicata* by virtue of the prior dismissal of the application under section 63 of the *Act* for an interim suspension.
 - b) That Mr. Kobylnyk be relieved of the Notice to Admit facts.
 - c) That the Complaints be stayed as being an abuse of process.

Res Judicata Application

8. Prior to this Hearing, the LSA made an application pursuant to section 63 of the *Act*, R.S.A. 2000, c. L-8, for an interim suspension of Mr. Kobylnyk, which was dismissed. An interim application by its very nature is a temporary or interlocutory application that addresses a possible suspension pending the actual conduct hearing. It is an application made pursuant to section 63 of the *Act* which allows for the suspension of a member at any stage of the proceedings.
9. The doctrine of *res judicata* is based on the principle that “[a]n issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner” and that “[d]uplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided”: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at paragraph 18.
10. The doctrine of *res judicata* has two main branches: cause of action estoppel and issue estoppel:

- a) Cause of action estoppel prohibits a litigant from bringing an action against another party when that same cause of action has been determined in earlier proceedings and also prevents a party from re-litigating a claim that could have been raised in an earlier proceeding. It applies where the basis of the cause of action was argued or could have been argued in the prior action through the exercise of reasonable diligence.
- b) Issue estoppel is narrower than cause of action estoppel as it applies to prohibit re-litigation of an issue that has already been decided in an earlier proceeding. It precludes the re-litigation of issues that have been previously decided in another proceeding. The Supreme Court of Canada in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), [2003] 3 S.C.R. 77, at paragraph 23, set out the following preconditions which must be established for issue estoppel:
 - i. the issue in the proceeding must be the same as the one decided in the prior decision;
 - ii. the prior judicial decision must have been final; and,
 - iii. the parties to both proceedings must be the same or their privies.

11. The argument by Mr. Kobylnyk that this Hearing is *res judicata* fails on either the doctrine of cause of action estoppel or the doctrine of issue estoppel for the following reasons:

- a) The “cause of action” at the interim suspension application is not a final determination of the merits of the citations. The issue being decided at an interim suspension application is much narrower in that any resulting suspension is not determinative of guilt on the citations. An interim suspension application is not a minitrial but rather the focus at such application is narrower than an actual hearing.
- b) There is an appreciable difference between the legal tests at an interim suspension application and that of a hearing. A hearing committee must determine on a balance of probabilities whether the alleged citations have been proven whereas an interim suspension application is based on a prima facie case. This prima facie test for a section 63 interim suspension was set out in *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180 as follows:

The extraordinary actions of imposing interim conditions or suspension under s.35 of the Health Professions Act may be taken where there is a prima facie case supporting the index allegations, and where, based on the material before the inquiry committee, the public requires immediate protection.

Application to be Relieved of Notice to Admit Facts

12. Mr. Kobylnyk was served with a Notice to Admit Facts and he was further advised that he must reply within 21 days of service whereby he could either admit or deny each fact. Mr. Kobylnyk did not reply to the Notice to Admit Facts and in accordance with Rule 90.4(8) of the Rules of the LSA (Rules), Mr. Kobylnyk was deemed to have admitted the truth of the facts and the authenticity of any documents.
13. On May 6, 2019 Mr. Kobylnyk was suspended for two months following the hearing on May 6, 2019. Following his suspension on August 1, 2019, the files of Mr. Kobylnyk were placed into the care of a custodian sometime in late 2019 and subsequently thereafter came into the possession of the LSA. Based on the placement of his files with the custodian and the LSA, Mr. Kobylnyk sought to be relieved of the Notice to Admit Facts based on the following arguments:
 - a) That the LSA had destroyed all of his files.
 - b) That Mr. Kobylnyk had no access to his files to verify the allegations after August 1, 2019, when he was suspended.
 - c) Mr. Kobylnyk was intending to return to practice after his two-month suspension ended on September 30, 2019 and that he would then have access to his files.
 - d) The LSA would not allow him access to his files and also that the LSA had lost some of his files.
14. LSA counsel was opposed to Mr. Kobylnyk's application, and provided the Committee with the following cases relating to the appropriate test to be considered on an application to be relieved of a Notice to Admit Facts:
 - *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64
 - *Law Society of Upper Canada v Fitz Gibbon*, 2015 ONLSTH 130
 - *Law Society of Ontario v Phukela*, 2022 ONLSTH 110
 - *Andriuk v Merrill Lynch Canada Inc.*, 2011 ABQB 59
15. The panel in *Law Society of Upper Canada v. Abrahams* set out the following factors to consider on an whether deemed admissions may be withdrawn:
 - a) The reasons for the request to withdraw the admissions.
 - b) The reasons why a response or request for an extension was not made within the time period set out in the Rules.

- c) The length of time since the Request to Admit was filed and the length of time until the hearing.
 - d) Any preparation that has been done, based on the deemed admissions.
 - e) Previous adjournments or other delay in the process.
 - f) Specific case management directions that have been made.
 - g) The effect of the deemed admissions and their withdrawal on the hearing process and on the interests of the parties.
16. Both the panels in the *Law Society of Upper Canada v Fitz Gibbon* and in *Law Society of Ontario v Phukela* confirmed and applied the factors set out in *Law Society of Upper Canada v. Abrahams*. The Court in *Andriuk v Merrill Lynch Canada Inc.* dealt with an application to set aside a Notice to Admit under the Alberta Rules of Court. Under the relevant Rule the setting aside of a Notice to Admit was within the discretion of the presiding Judge. On the issue of the striking of a Notice to Admit the Court stated in part, at paragraph 22:
- There will need to be a good reason, which is inconsistent with the goals and purposes of the new rules, as well as the wording and intention of rule 6.37 before a Notice to Admit will be struck: something that amounts to an abuse of process or strikes at the heart of adjudicative fairness....
17. The Committee finds that the *Abraham* factors are relevant and would apply them in this instance. To those factors the Committee would, based on the *Andriuk v Merrill Lynch Canada Inc.* decision, add the following factors:
- a) Did the Notice to Admit Facts amount to a denial of adjudicative fairness?
 - b) Did the Notice to Admit Facts amount to an abuse of process?
18. Considering these factors, the Committee finds as follows:
- a) There is no evidence that the LSA destroyed any files of Mr. Kobylnyk and that would be an unreasonable conclusion based on the legal obligations of the LSA to maintain records.
 - b) There is no evidence to support the assertion by Mr. Kobylnyk that he was unable or prevented from obtaining access to his files.

- c) There was no evidence that Mr. Kobylnyk tried to contact either the custodian or the LSA to access his files.
 - d) There were a number of instances where Mr. Kobylnyk failed to attend at Pre-Hearing Conferences where he could have raised some of the evidentiary concerns about access to his files.
 - e) Mr. Kobylnyk was personally served with the Notice to Admit Facts on February 2, 2022 and his 21 days expired on February 24, 2022. Mr. Kobylnyk raised no objections until the Hearing on March 8, 2023, more than one year since the expiry of his reply period.
 - f) Mr. Kobylnyk, after receiving the Notice to Admit Facts, took no steps to try and obtain access to his files.
 - g) Mr. Kobylnyk did not expressly deny any of admissions in the Notice to Admit Facts and he provided no evidence to suggest that any of the admissions were in error.
 - h) Expecting to be able to rely on the Notice to Admit Facts, counsel for the LSA had not made any preparations or called any necessary witnesses. If the application were to be granted it would necessitate a delay in the Hearing.
 - i) There is nothing in any of the claims by Mr. Kobylnyk to suggest that there has been a denial of adjudicative fairness or an abuse of process.
19. The application to be relieved of the Notice to Admit Facts was conditionally denied. The Committee was prepared to hear further arguments on this application in the event that Mr. Kobylnyk was able to obtain further evidence during the adjournment period.

Abuse of Process

20. Mr. Kobylnyk was asked at the March 8, 2023 Hearing if he wished to seek an adjournment to try and obtain access to any of his files in the possession and care of the LSA. After some discussion with LSA counsel and Mr. Kobylnyk the Committee consented to adjourning the Hearing until April 4, 2023 to allow Mr. Kobylnyk time to access his files with the LSA. To facilitate this process the Committee provided Mr. Kobylnyk with the telephone number and an email for the Custodianship office. It was stressed to Mr. Kobylnyk that the onus was on him to contact the Custodianship office to access his files.
21. Following the reconvening of the Committee on April 4, 2023, Mr. Kobylnyk made an application for a stay of proceedings based on an assertion that allowing the Hearing to proceed would amount to an abuse of process. His arguments were as follows:

- a) When Mr. Kobylnyk attended at LSA offices to review his files he was only provided with three files from the LSA.
 - b) The J.G. file (Complaint #4) did not have any trust accounting that would indicate that a significant portion of the retainer had been returned to the client. The J.G. file did not have any of the emails with the client.
 - c) The file for Complaint #2 contained documents from other clients unrelated to this client. This file apparently contained Affidavits of Service but none of the correspondence or accounting.
 - d) For Complaint #1, Mr. Kobylnyk stated that none of the correspondence was present.
 - e) Mr. Kobylnyk was also seeking his personal file which contained information about a serious car accident and various surgeries but was advised that the LSA did not have his personal file.
 - f) Mr. Kobylnyk argued that since the evidentiary record no longer exists and that the chain of custody has been broken that this amounts to a “miscarriage of justice.”
 - g) He further argued that no original documents existed, and that Committee should only rely upon “original” evidence.
 - h) That the case by LSA is a prima facie case and Mr. Kobylnyk is unable to respond because of the lost and/or missing files and documents.
 - i) That someone “rifled thorough” Mr. Kobylnyk’s files and “dislocated them and discombobulated them”.
22. Mr. Kobylnyk argued that the Complaints be “rendered an abuse of process” because “it is oppressively unfair” to him since he is unable to respond to the Complaints since his files are “gone” and “don’t exist”. Mr. Kobylnyk position was that he was being denied a “fair, reasonable opportunity to respond.”
23. The Committee dismissed the application for a stay of proceedings. It is not within the authority of this Committee to determine what may or may not have happened with Mr. Kobylnyk’s files. Mr. Kobylnyk has been aware of these allegations since at least 2018 and he presented no evidence about any efforts on his part to obtain or review his files prior to this Hearing.

24. The Committee also would note that Mr. Kobylnyk had an opportunity since 2019 to obtain disclosure. There were Pre-Hearing Conferences on November 20, 2019 and December 10, 2019 which Mr. Kobylnyk did not attend. At those conferences the LSA was trying to get disclosure to Mr. Kobylnyk and same was directed on November 20, 2019 to be sent by registered mail to Mr. Kobylnyk.
25. Mr. Kobylnyk presented no new evidence on April 4, 2023. Accordingly, the dismissal of the application to be relieved on the Notice to Admit Facts was confirmed.

EXHIBITS

26. Mr. Kobylnyk raised an objection regarding the admission of the Pre-Hearing Conference Report dated October 15, 2019 on the basis that the report was not relevant due to its age and therefore prejudicial. The Committee ruled that the October 15, 2019 Pre-Hearing Conference Report was both relevant and material.
27. The following documents were duly entered as exhibits:
 - Exhibit 1 Letter of appointment dated December 5, 2022
 - Exhibit 2 Notice to Attend dated December 5, 2022
 - Exhibit 3 Certificate of Status dated January 19, 2023
 - Exhibit 4 Letter of Exercise of Discretion dated February 1, 2023
 - Exhibit 5 Notice to Admit Facts and Exhibits
 - Exhibit 6 Copy of hand delivered letter to Mr. Kobylnyk dated December 15, 2022
 - Exhibit 7 Mr. Kobylnyk's Acknowledgment of Receipt of Documents dated December 15, 2022
 - Exhibit 8 Lawyer Record dated January 19, 2023
 - Exhibit 9 Pre-Hearing Conference Reports with various dates
 - Exhibit 10 Estimated Statement of Costs
 - Exhibit 11 Letter dated December 12, 2022 from Mr. Kobylnyk to the LSA
 - Exhibit 12 Pre-Hearing Conference Report dated October 15, 2019
 - Exhibit 13 Emails dated March 30 and 31, 2023 and April 3, 2023 between Mr. Kobylnyk, Custodianship Counsel and LSA Counsel

- Exhibit 14 Emails dated March 30 and 31, 2023 and April 3, 2023 between Mr. Kobylnyk, Custodianship Counsel
- Exhibit 15 Emails dated August 6 and 7, 2019 between Mr. Kobylnyk and the Custodian
- Exhibit 16 Emails dated February 5, 2020 between Mr. Kobylnyk and the Custodian

COMPLAINT #1

28. Complaint #1 revolved around a situation where Mr. Kobylnyk failed to respond to opposing counsel over a period of a number of months.

Citation 1: Failing to respond to another Lawyer in a timely manner

Background Facts

29. Mr. Kobylnyk was acting for defendants in a civil action commenced in 2014 and M.M. was the lawyer acting for the Plaintiffs. The timelines were as follows:
- a) On November 14, 2014 Mr. Kobylnyk on behalf of his clients filed a Summary Judgment Application. On September 7, 2016, October 19, 2017, January 13, 2017, February 2, 2017 and February 22, 2017 M.M. had emailed Mr. Kobylnyk asking when Mr. Kobylnyk's clients would be proceeding with the Summary Judgment Application.
 - b) On the January 23, 2017 email M.M. proposed entering into a litigation plan. The February 22, 2017 email from M.M. advised Mr. Kobylnyk that if M.M. did not hear from Mr. Kobylnyk, M.M. had instructions to bring an application for the approval of a litigation plan. Not having received any response, M.M. filed an application on March 20, 2017 to have a litigation plan approved.
 - c) On March 9, 2017 Mr. Kobylnyk responded to M.M. advising that he was "down and out for the past while with pneumonia." The email address of Mr. Kobylnyk was his principal law firm email. Before the March 20, 2017 court date, the parties entered into a consent litigation plan.
30. Further issues continued on this matter as follows:
- a) On July 27, 2017, M.M. sent Mr. Kobylnyk an email regarding outstanding matters in respect of the litigation. On August 10, 2017 Mr. Kobylnyk and M.M. agreed to schedule a Special Chambers Summary Judgment application for March 5, 2018.

- b) M.M. wrote to Mr. Kobylnyk on August 21, 2017, September 26, 2017, October 12, 2017, October 22, 2017 and October 31, 2017 regarding setting of dates for cross examination on affidavits. Not having received any reply, M.M. filed an application on November 7, 2017 to have dates set for cross examination.
 - c) On November 10, 2017 Mr. Kobylnyk left M.M. a voicemail stating that his email had been down since the first week of October and that he would have responded if he had received the earlier emails. Mr. Kobylnyk offered his apologies for not responding to the emails from M.M.
 - d) On November 13, 2017 Mr. Kobylnyk left a voicemail message with M.M.'s assistant asking for an adjournment of the November 2017 application. Mr. Kobylnyk and M.M. subsequently discussed this application and same was resolved by consent.
 - e) It was almost three months between the first email from M.M. on August 21, 2017 and the reply email of Mr. Kobylnyk on November 10, 2017.
31. Between February and June of 2018 M.M. and Mr. Kobylnyk exchanged emails regarding setting dates to attend before a Master to speak to the issue of costs. M.M. sent an email on June 19, 2018 to the Master advising that he had "yet to receive any position" from Mr. Kobylnyk. On June 21, 2018 M.M. again sent Mr. Kobylnyk an email regarding the failure of Mr. Kobylnyk to advise that he would not be showing for court before the Master, causing M.M. to wait an unnecessarily long period of time. On July 4, 2018 M.M. sent the Master a letter advising that Mr. Kobylnyk had not responded and asking that the costs issue be done by way of written submissions.

Finding on Guilt

32. Section 7.2-7 of the Code of Conduct states:

A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

33. Mr. Kobylnyk acknowledged in his evidence that he had failed to respond in a timely manner to M.M. Mr. Kobylnyk at page 113, lines 24 to 26, page 114, lines 1 to 12 and page 116, lines 6 to 10, of the Hearing transcript stated:

And is it the case that I did not respond on a timely basis to [M.M.]? Yes. But as I say, there were e-mails that I had sent to him just saying, hey, sit tight. I responded to [X]. Perhaps the Panel knows who she is. She's a court clerk, who at least four years ago, and a little bit before that, she replaced – she replaced [Y] as the court clerk who was responsible for the Masters.

And so I had e-mails to her, and, you know, copied to [M.M.] of course. Those aren't there. But I will candidly admit that there were some correspondences that I didn't respond to on a timely basis, and that was by design....

...

I guess the salient issue that the Panel is looking at is can we disbar this guy because he failed to respond to [M.M.]? I failed to respond to [M.M.] on several emails, and I have given you the reasons why.

34. As for his reasons for not responding, Mr. Kobylnyk stated that he was instructed by his client not to respond to the other lawyer as a “tactical play” to bide time for Mr. Kobylnyk’s client. Mr. Kobylnyk also gave evidence at page 116, lines 17 to 21 of the Hearing transcript as follows:

So that is the [M.M.] file. And I can't dispute the emails that are in the Notice to Admit, but please take my word for it, please. There were other emails. Now, there were not a lot, but there were some.

35. Regarding citation 1, namely that Mr. Kobylnyk failed to respond in a timely manner to communications from another lawyer, the Committee finds Mr. Kobylnyk guilty. On at least two separate occasions Mr. Kobylnyk failed to respond in one instance for a period of six months and in a second instance by almost three months. While Mr. Kobylnyk apologized for his delays, that does not excuse these unreasonably long delays.
36. Mr. Kobylnyk by his own admissions acknowledges that he failed to respond in a timely manner. He blames the delays on both illness and a faulty email. On this last point, there is no evidence that Mr. Kobylnyk’s work email was not otherwise operational. When asked by the LSA to provide evidence from Mr. Kobylnyk’s cell phone service provider, Mr. Kobylnyk refused because he did not want to provide an “image” of his cell phone. Such refusal is not reasonable in the circumstances.
37. It is no defence to the citation to say that the client instructed you to not respond to the other lawyer. A lawyer has a duty to his client to follow instructions, but also a duty to other lawyers as provided for in the Code of Conduct.

Citation 2: Failure to promptly respond to and cooperate with the LSA

Background Facts

38. Conduct Counsel with the LSA forwarded the Complaint from M.M. by way of a letter to Mr. Kobylnyk (which was sent to Mr. Kobylnyk’s work email) on November 20, 2017. That letter requested that Mr. Kobylnyk respond within 14 days to the M.M. Complaint. No response was received by Conduct Counsel. A further letter was sent on December

15, 2017 by Conduct Counsel to Mr. Kobylnyk whereby Conduct Counsel advised that if a reply was not forthcoming by January 5, 2018 that the matter would be sent to a Conduct Committee Panel. Again, Mr. Kobylnyk did not respond.

39. An investigator attempted to contact Mr. Kobylnyk on no less than six different times and dates without any response by Mr. Kobylnyk. Only after the investigator hand delivered the previous Conduct Counsel letters of November 20, 2017 and December 15, 2017 did Mr. Kobylnyk reply on February 2, 2018. That email response from Mr. Kobylnyk stated:
- a) Mr. Kobylnyk admitted that there was a delay in responding to M.M. between August 11, 2017 and November 7, 2017.
 - b) The reason for the delay was that Mr. Kobylnyk was having problems with his firm's email account and that Mr. Kobylnyk only became aware of the problem after persons contacted him by telephone to inquire if he was receiving emails.
 - c) Mr. Kobylnyk had apologized to M.M. for the delayed replies.
40. On February 8, 2018, an investigator from the LSA sent an email to Mr. Kobylnyk (to the same address as the email from Mr. Kobylnyk on February 2, 2018) directing that Mr. Kobylnyk provide dates to attend for an interview. The investigator also left a voicemail. The investigator, not having received a reply, continued to try and contact Mr. Kobylnyk between February 16, 2018 and March 5, 2018, which included emails to the firm email, attending at the offices of Mr. Kobylnyk, emails to an alternative email that had been provided by Mr. Kobylnyk and leaving voicemail messages. Mr. Kobylnyk did not respond to any of these communications.
41. The investigator was only able to deliver an Investigation Order by attending at the Court House on March 5, 2018 when he knew that Mr. Kobylnyk was scheduled to be in court. Thereafter a further string of emails took place between March 6, 2018 and March 28, 2018 whereby either Conduct Counsel or the investigator made demands for documents and to schedule an interview. On March 29, 2018 Conduct Counsel sent Mr. Kobylnyk an email advising that they would be making an interim suspension application. On May 5, 2018 an interim suspension application was heard, but ultimately denied.
42. On February 12, 2019 and March 8, 2019 Conduct Counsel sent a series of letters via email to Mr. Kobylnyk requesting a response to the M.M. Complaint. On April 17, 2019 Conduct Counsel sent a letter to Mr. Kobylnyk via hand delivery requesting a response by May 3, 2019 to Complaint #1, and also to Complaint #2 and Complaint #3.
43. On May 6, 2019 Mr. Kobylnyk sent an email to the investigator, and Conduct Counsel, where Mr. Kobylnyk advised that he was in a discipline hearing, which had resolved itself, and he went on to say: "I would like to speak to you about the new matters and can

assure you that I will fully cooperate with you and the Law Society regarding them.” On May 7, 2019 Conduct Counsel sent an email to Mr. Kobylnyk where they again reiterated that they required Mr. Kobylnyk to provide written responses to the three Complaints. Mr. Kobylnyk did not respond to the email of May 7, 2019 from Conduct Counsel. On May 24, 2019 Conduct Counsel sent Mr. Kobylnyk an email, and registered letter, requesting a response to the Complaints by June 14, 2019. Mr. Kobylnyk did not respond to the May 24, 2019 letter.

44. When asked about this citation, Mr. Kobylnyk stated at page 118, lines 7 to 8 and at page 129, lines 10 to 11 of the Hearing transcript:

Well, first and foremost, I concede that point. I will give the Panel some context if I may...

...

I didn't respond to the investigators on a timely basis. When I did, it was combative.

45. The “context” referred to by Mr. Kobylnyk, and his reasons for being “combative”, essentially revolved around his belief that there was a “conspiracy against” him and his clients and that he “was being hounded by the Law Society”. This belief developed for a number of reasons, but in particular:

- a) Mr. Kobylnyk was advised by a senior lawyer, who had apparently acted for the LSA in respect of the prior complaints against Mr. Kobylnyk, that someone at the LSA “has a real hard-on for you”.
- b) Mr. Kobylnyk had a case with the Institute of Chartered Accountants (Institute) where he had obtained a stay of proceedings on the basis that the Institute failed to follow the governing statute, which amounted to an abuse of process. That same lawyer indicated that someone from the Institute knew someone at the LSA and that was why the LSA was giving Mr. Kobylnyk extra attention.
- c) On one occasion the LSA investigator showed up at Mr. Kobylnyk's office and yelled at him, even though Mr. Kobylnyk had pneumonia.
- d) Mr. Kobylnyk recalled an incident where someone showed up unannounced at his office and advised that they were going to look at Mr. Kobylnyk's computer and trust accounts. This person wanted to see three files in respect of certain clients, including the Institute and two clients who were making claims against regulatory bodies. Mr. Kobylnyk refused to provide the files and he heard nothing further from LSA.

- e) Mr. Kobylnyk went on to discuss other instances of improper processes by the Association of Professional Engineers and Geoscientists of Alberta, the Real Estate Council of Alberta and the Better Business Bureau.
- f) Mr. Kobylnyk further indicated he was also very “jaded by the 13 Bencher emergency hearing that was brought against” him and that he felt this was a “very harsh, unwarranted, unfair proceeding”.
- g) During the time in question Mr. Kobylnyk was experiencing a “health condition” and he was working alone with no peers to reach out to for support. In particular he suffered from depression and sleep apnea, which he felt was impacting his professional work.

Finding on Guilt

- 46. In respect of citation 2, namely that Mr. Kobylnyk failed to promptly respond to and cooperate with the LSA, the Committee finds Mr. Kobylnyk guilty. Section 7.1-1 of the Code of Conducts states: “A lawyer must reply promptly and completely to any communication from the Society.”
- 47. Mr. Kobylnyk by his own admission did not respond to and cooperate with the LSA. Between November 20, 2017 and March 29, 2017, some four months, the LSA attempted to contact Mr. Kobylnyk through emails, voicemails and personal attendances at his office. It was not until faced with an interim suspension application that Mr. Kobylnyk finally responded. The primary email address was Mr. Kobylnyk’s firm work email and there is no evidence that he was not receiving his emails after November 20, 2017. In fact, Mr. Kobylnyk responded to the LSA using this email address.

Citation 3: Breach of Undertaking

Background Facts

- 48. The May 6, 2019 hearing committee imposed the following Undertaking (Undertaking) on Mr. Kobylnyk:

I acknowledge and understand my obligation to promptly respond to and cooperate with the Law Society of Alberta and undertake to do so.

- 49. Mr. Kobylnyk’s evidence was that the Undertaking did not apply while he was suspended since he was “out of the game”.

Finding on Guilt

50. Mr. Kobylnyk has not only failed to respond in a timely fashion to the LSA, but he has to date not provided all of the information and documents being requested by the LSA. These failures both to respond in a timely manner and to provide fulsome disclosure amounts, on a balance of probabilities, to a breach by Mr. Kobylnyk of his Undertaking. Mr. Kobylnyk's explanation that he thought the Undertaking was no longer applicable while he was suspended is not an objectively reasonable answer.

Citation 4: Improper Signing of Consent Order

51. Counsel for LSA advised that they would not be calling any evidence in respect of citation 4 and accordingly this citation is dismissed.

COMPLAINT #2

52. Complaint #2 arose from a situation where Mr. Kobylnyk was retained by a client to file a civil claim and which Mr. Kobylnyk failed to take any further actions following the filing of the claim.

Citation 5: Failing to serve a client

Background Facts

53. On March 16, 2018 S.D. retained Mr. Kobylnyk to represent their company (A.S.L.) in a civil action whereby A.S.L. was claiming not to be paid by the defendants for work completed. S.D.'s daughter handled communications with Mr. Kobylnyk since English was not S.D.'s first language. The action and communications were as follows:
- a) March 27, 2018 Mr. Kobylnyk filed a civil claim in Provincial Court.
 - b) May 17, 2018 Mr. Kobylnyk advised S.D.'s daughter that he was not able to serve the defendants by registered mail.
 - c) June 11, 2018 S.D.'s daughter instructed Mr. Kobylnyk to hire a process server.
 - d) July 30, 2018 S.D.'s daughter wrote to Mr. Kobylnyk asking for an update. August 13, 2018 S.D.'s daughter again wrote to Mr. Kobylnyk asking for an update.
 - e) August 14, 2018 Mr. Kobylnyk responded to S.D.'s daughter and advised that a process server will be attempting service again within 72 hours. August 17, 2018 Mr. Kobylnyk wrote to S.D.'s daughter and advised that the process server was going to attempt personal service a couple more times.
 - f) August 22, 2018 Mr. Kobylnyk emailed S.D.'s daughter advising that personal service had been affected and that the defendant had 21 days to defend.

- g) October 28, 2018 S.D.'s daughter wrote to Mr. Kobylnyk seeking an update.
 - h) November 26, 2018 S.D.'s daughter again wrote to Mr. Kobylnyk asking for an update.
 - i) December 19, 2018 S.D.'s daughter emailed Mr. Kobylnyk advising that she had visited the courthouse and was advised that nothing had been filed since March 2018.
 - j) January 2, 2019 S.D.'s daughter wrote a further email to Mr. Kobylnyk requesting that Mr. Kobylnyk respond.
 - k) As of January 25, 2019 nothing further had been filed with the Court.
54. Mr. Kobylnyk gave evidence that he was having issues with affecting personal service on the defendant, but the client did not want to pay him to obtain an order for substitutional service. Eventually service was completed, and an Affidavit of Service obtained. Following service, Mr. Kobylnyk prepared a default judgment and a writ, but he was instructed not to file same.

Finding on Guilt

55. Mr. Kobylnyk was retained March 16, 2018 and as of January 25, 2019 Mr. Kobylnyk had not filed anything with court since March 2018. This raises serious issues regarding the conduct of Mr. Kobylnyk:
- a) Mr. Kobylnyk had not taken any active steps in accordance with the client instructions for some ten months.
 - b) More strikingly, Mr. Kobylnyk was advising the client that he had in fact had the defendant personally served and that he would be noting that defendant in default. This was clearly not true.
 - c) The assertion by Mr. Kobylnyk that he was instructed not to take further action is simply contrary to the correspondence from the client.
56. Section 3.2-1 of the Code of Conduct states:
- 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.

57. The commentary under this section states: “A lawyer should ensure that matters are attended to within a reasonable time frame.” A delay in doing nothing for ten months cannot be considered reasonable. Section 3.2-3 of the Code of Conduct also imposes a duty of honesty and candour:

When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

58. Mr. Kobylnyk has failed in both providing prompt service and acting with honesty and candour and therefore the Committee finds him guilty of this citation.

Citation 6: Failing to promptly respond to and cooperate with the LSA

Background Facts

59. On February 12, 2019 and March 8, 2019 letters were emailed to Mr. Kobylnyk seeking a response to Complaint #2. On April 17, 2019 Conduct Counsel hand delivered a letter to Mr. Kobylnyk requesting a response to all of Complaints #1, #2 and #3, and requesting a response by May 3, 2019.
60. On May 6, 2019 Mr. Kobylnyk sent an email to the investigator which stated that Mr. Kobylnyk was about to begin a week-long discipline hearing, but that same had been resolved. Mr. Kobylnyk went on to say that he was willing to “fully cooperate with you and the Law Society regarding” these Complaints. Despite this assertion Mr. Kobylnyk never provided a response to citation 6.

Finding on Guilt

61. There were separate demand letters from the LSA for the first three Complaints. As already stated in respect of Complaint #1, Mr. Kobylnyk failed to respond to any of these demand letters. Accordingly, the Committee finds Mr. Kobylnyk guilty of citation 6.

Citation 7: Breach of Undertaking

62. Given the breach of citation 6, the Committee also find Mr. Kobylnyk guilty of citation 7.

COMPLAINT #3

63. Complaint #3 arose from a failure by Mr. Kobylnyk to pay an outstanding invoice for court reporting services.

Citation 8: Failing to promptly meet financial obligations in relation to his practice

Background Facts

64. Mr. Kobylnyk retained the services of A.R.G. for court reporting services involving various client matters. Five invoices were issued to Mr. Kobylnyk between December 12, 2017 and October 17, 2018 in the total amount of \$3,089.43.
65. Mr. Kobylnyk explained that it was his practice to have clients agree that they would pay directly for any disbursements such as court reporters. It was also Mr. Kobylnyk's understanding that these accounts had now been paid. Mr. Kobylnyk also indicated that these accounts, or at least some of them, came directly to the custodian.

Finding on Guilt

66. The Code of Conduct, section 7.1-2, states:

A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy, when called upon to do so.

67. Clearly Mr. Kobylnyk failed to promptly meet his financial obligations in relation to his legal practice. The ultimate responsibility for the invoices rests with Mr. Kobylnyk and he should have taken steps to either confirm that the client paid the invoice or to otherwise personally pay the invoices. It is also to be noted that these invoices were from 2017 and 2018, which was some time before the August 1, 2019 suspension.

Citation 9: Failing to respond in a timely manner to communications from another professional

Background Facts

68. On April 13, 2018 A.R.G. sent an email to Mr. Kobylnyk requesting payment. Mr. Kobylnyk did not respond. On July 13, 2018 and on October 12, 2018 A.R.G. left voicemail messages for Mr. Kobylnyk, but A.R.G. received no response. On October 15, 2018 A.R.G. sent Mr. Kobylnyk a letter again asking for payment of the invoices. Mr. Kobylnyk did not respond to this letter.

Finding on Guilt

69. Over a period of six months Mr. Kobylnyk failed to respond to A.R.G. Section 7.2-7 of the Code of Conduct (cited earlier) requires "reasonable promptness of all professional letters..." A delay of six months cannot be considered reasonably prompt and accordingly the Committee finds Mr. Kobylnyk guilty of citation 9.

Citation 10: Failing to promptly respond to and cooperate with the Law Society of Alberta

70. The Committee would repeat the facts as stated under citation 2 regarding the lengthy attempts by the LSA requesting that Mr. Kobylnyk respond to Complaints #1, #2 and #3. Therefore, the Committee finds Mr. Kobylnyk guilty of citation 10.

Citation 11: Breach of Undertaking

71. In view of the finding of guilt on citation 10, the Committee finds Mr. Kobylnyk guilty on citation 11.

COMPLAINT #4

72. Complaint #4 arose from a complaint made by a former client, J.G., regarding an allegation that Mr. Kobylnyk failed to move his matter forward, failed to promptly respond to him and that Mr. Kobylnyk failed to keep him informed of his matter.

Citation 12: Failing to serve his client, J.G.

Background Facts

73. Mr. Kobylnyk was retained by J.G. in October 2010 to pursue a claim whereby J.G. alleged that the defendants, B.S.G. and G.B., failed to do a proper background check on an individual, B.A. The nature of the claim by J.G. was that he retained B.S.G. to perform a background check on an individual, B.A., as he was contemplating investing monies with B.A.'s real estate investment company. Eventually J.G. made the investment with that company and ultimately lost all of his investment. J.G. alleged that the background check and resulting Report, were materially false and inaccurate. Mr. Kobylnyk filed a Statement of Claim on behalf of J.G. on December 16, 2010.
74. On August 12, 2012, August 19, 2012, January 16, 2014, April 1, 2014, April 23, 2014, July 4, 2014, August 21, 2014 and January 27, 2015 J.G. sent emails to Mr. Kobylnyk asking for an update on the claim and indicating that the matter had been dragging on for too long. At no time during this two and a half-year period did Mr. Kobylnyk respond to his client's emails and voicemail messages.

Finding on Guilt

75. As noted earlier, 3.2-1 of the Code of Conduct provides:

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.

76. The commentary under this section states: "A lawyer should ensure that matters are attended to within a reasonable time frame." A delay in doing nothing for two plus years cannot be considered reasonable. Mr. Kobylnyk failed to respond to his client in a timely manner and the Committee therefore finds him guilty of citation 12.

Citation 13: Acting while in a conflict or potential conflict of interest

Background Facts

77. The process by which monies were invested by J.G. involved a convoluted process whereby invested monies firstly went to a numbered company controlled by D.C., who was the sole director of that numbered company. D.C. was also a client of Mr. Kobylnyk. Mr. Kobylnyk did not disclose to J.G. that D.C. was his client. An email was sent by D.C. to J.G. confirming receipt of the investment monies and that the numbered company was “investing exclusively in promissory notes” for a specific real estate development company. The sole director of this real estate company was B.A.
78. Mr. Kobylnyk’s evidence was that J.G. and D.C. were good friends and that he had been acting for both parties. It was further stated by Mr. Kobylnyk that J.G. paid the investment money directly to B.A., but at a disciplinary hearing for J.G. (he was an accountant) J.G. stated that he paid the money to D.C. This evidence was not consistent with what was in the Statement of Claim filed on behalf of J.G. Given this evidence by J.G., Mr. Kobylnyk stated that J.G. knew that his case was “not likely to win the day in court” and that his claim was without merit.
79. Mr. Kobylnyk further advised during his testimony that he had contacted a practice advisor to discuss the conflict issue. It was also suggested by Mr. Kobylnyk that the application by the other party for Summary Judgment placed Mr. Kobylnyk into a conflict position, which then prompted Mr. Kobylnyk to reach out to another lawyer.

Finding on Guilt

80. Section 3.4-1 of the Code of Conduct states:

A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

81. The commentary under section 3.4-1 makes it clear that a “conflict of interest exists when there is a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client ...”. While Mr. Kobylnyk may not have necessarily had a conflict of interest in this particular instance, there still rests upon Mr. Kobylnyk an obligation to advise the client of a possible conflict and to obtain the consent of J.B. Paragraphs 12 and 13 of the commentary under section 3.4-1 states:

In cases involving the simultaneous representation of current clients, consent may be express or implied. Implied consent is applicable in only exceptional circumstances. It may be appropriate to imply consent when acting for government agencies, chartered banks and other entities that might be

considered sophisticated and frequent consumers of legal services from a variety of law firms. The matters must be unrelated, and the lawyer must not possess confidential information from one client that could affect the other client.

The nature of the client is not a sufficient basis upon which to imply consent. The terms of the retainer, the relationship between the lawyer and client, and the unrelated matters involved must be considered. There must be a reasonable basis upon which a lawyer may objectively conclude that the client commonly accepts that its lawyer may act against it.

82. At no time did Mr. Kobylnyk advise his client of the potential conflict of interest. From an objective point of view, it cannot be said that J.G. implicitly consented to Mr. Kobylnyk acting for D.C. and there is no evidence that J.G. was even aware that D.C. was also a client of Mr. Kobylnyk. Accordingly, the Committee finds Mr. Kobylnyk guilty of citation 13.

Citation 14: Failing to obtain instructions from his client, J.G., on all matters not falling within his express or implied authority

Background Facts

83. On February 23, 2015 the Defendants filed an application to have the claim dismissed due to long delay. No steps had been taken in respect of the action since the filing of the Statement of Defence on February 22, 2013. The application to dismiss for long delay was heard on August 9, 2016. Prior to the hearing of this application, counsel for the Defendants sent a letter on July 7, 2016 to Mr. Kobylnyk advising that they would agree to dismissal of the action on a without costs basis.
84. At no time did Mr. Kobylnyk advise J.G. of this letter or of the pending application to dismiss the action due to delay. The delay application proceeded, and an Order was granted whereby the action by J.G. was dismissed. The Order of August 9, 2016 indicated in the preamble: “and upon noting the absence of the Plaintiff or his counsel, although properly served ...”.
85. Mr. Kobylnyk was served on August 10, 2016 with the Order dismissing his client’s action due to delay. At no time did he advise his client of the Order.
86. Mr. Kobylnyk filed an application on August 30, 2016 to set aside the Order of August 9, 2016, but Mr. Kobylnyk never advised J.G. of this application and nor did he seek instructions to make such an application.

Finding on Guilt

87. Mr. Kobylnyk failed to obtain instructions from his client regarding the application to dismiss for long delay, in respect of the proposal letter of July 7, 2016, to file an

application to set aside the Order of August 9, 2016 or to advise his client of the August 9, 2016 Order. The Committee therefore finds Mr. Kobylnyk guilty of citation 14.

Citation 15: Failing to be candid with his client, J.G.

Background Facts

88. On November 4, 2015 J.G. emailed Mr. Kobylnyk indicating that “despite a large number of calls and emails you have chosen to stop communicating with me for what has probably been years now.” On November 5, 2015 Mr. Kobylnyk replied by email to J.G. that the lawyer for the Defendants was disputing the Affidavit of Records which J.G. had apparently sworn and that Mr. Kobylnyk had provided the other lawyer with an “Affidavit of Service confirming that the Affidavit of Records was duly served on a timely basis.” Mr. Kobylnyk suggested applying for Summary Judgment and J.G. replied by email that same day instructing Mr. Kobylnyk to apply for Summary Judgment. Mr. Kobylnyk never applied for Summary Judgment.

Finding on Guilt

89. Section 3.2-3 of the Code of Conduct imposes a duty of honesty and candour:

When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

90. Mr. Kobylnyk was not forthright with his client when he advised that he would be proceeding with an application for Summary Judgment. Accordingly, the Committee finds Mr. Kobylnyk guilty of citation 15.

Citation 16: Failing to promptly respond to and cooperate with the Law Society of Alberta

Background Facts

91. On July 24, 2019 an LSA investigator sent a letter directing Mr. Kobylnyk to produce the file for J.G. and all related communications. Mr. Kobylnyk did not respond to this letter.
92. On February 18, 2020 Mr. Kobylnyk did send an email to Conduct Counsel on different complaints. In reply to this email Conduct Counsel sent an email to Mr. Kobylnyk on February 20, 2020 reminding Mr. Kobylnyk he had not responded to cooperate with the complaint by J.G. Mr. Kobylnyk never responded to this email.
93. On March 9, 2020 Conduct Counsel sent Mr. Kobylnyk a letter enclosing the investigation report and seeking a written response from Mr. Kobylnyk within 14 days. No response was received from Mr. Kobylnyk.

Finding on Guilt

94. On three occasions, over seven-plus months, Mr. Kobylnyk failed to respond to the LSA. Mr. Kobylnyk is found guilty of citation 16.

Citation 17: Breach of Undertaking

95. In view of the finding of guilt on citation 16, the Committee also finds that Mr. Kobylnyk was in breach of his Undertaking.

COMPLAINT #5

96. This Complaint involves a failure by Mr. Kobylnyk to report to the LSA writs of enforcement that had been filed against him.

Citation 18: Failed to comply with Rule 119.34

Background Facts

97. Mr. Kobylnyk, who had been suspended since May 16, 2019, sought reinstatement on September 30, 2019. In the reinstatement application Mr. Kobylnyk indicated that he was a judgment debtor. Further investigation by the LSA revealed that Mr. Kobylnyk had four writs of enforcement issued against him on June 5, 2013, two on February 14, 2014 and one on January 28, 2019. Two were from banks (which were presumably for credit cards) and two were by the Canadian National Revenue Agency (CRA). These writs totaled \$90,485.00. Mr. Kobylnyk did not report any of these writs to the LSA.
98. Mr. Kobylnyk did in his evidence provide an explanation for how some of the writs arose. He further advised that he did pay off the writs shortly after he received notice of same from Land Titles. To his credit Mr. Kobylnyk did confirm that he failed to notify the LSA at page 163, lines 20 to 26, and page 164, lines 1 to 5 of the Hearing transcript, where he stated in reference to the credit card writs:

So the first I knew about this lawsuit and this writ that had been filed against me was when we got registered mail from the Land Title's office. And so once I got that notice, I realized that, wow, this is really serious. And shortly thereafter I paid it off. Now did I tell the Law Society? No. I will admit that I was not aware of Rule 119.34. I didn't know that I had to, but I also didn't know that this is something that is so drastically material that, you know, we need to deal with it. I mean, there was a writ, I dealt with it.

99. Regarding the writs filed by the CRA, Mr. Kobylnyk explained that he had started a side business and he was issued the wrong GST number. Mr. Kobylnyk stated that he failed to see how these writs had "any bearing on my ability to be competent legal counsel."

Finding on Guilt

100. Rule 119.34 is now Rule 119.42. Rules 119.42(2)(b) and 119.42(3) state:

119.42(2) A lawyer is required to immediately notify the law firm's responsible lawyer of

(b) the issuance of a writ of enforcement against the lawyer or their law firm.

119.42(3) A responsible lawyer must immediately give the Executive Director written notice of any of the items in subrule (2) that apply to them, their law firm or a lawyer at their law firm.

101. Mr. Kobylnyk stated that he was no longer a judgment debtor. This may in fact be true, but that does not absolve Mr. Kobylnyk of his obligation to notify the Law Society. Accordingly, Mr. Kobylnyk is found guilty of citation 18.

Citation 19: Failed to promptly respond to and cooperate with the Law Society of Alberta

Background Facts

102. On October 7, 2019 Conduct Counsel with the LSA sent a letter to Mr. Kobylnyk seeking a written response to this Complaint. This letter was picked up in person by Mr. Kobylnyk on October 24, 2019. On December 4, 2019 Conduct Counsel again wrote to Mr. Kobylnyk seeking a written reply to this Complaint. This letter was sent by registered mail and Mr. Kobylnyk signed for that registered mail on December 30, 2019.
103. On February 18, 2020 Mr. Kobylnyk sent an email to Conduct Counsel, which letter related to a different Complaint, and did not address Complaint #5. On February 20, 2020 Conduct Counsel responded by email to Mr. Kobylnyk and again sought a reply from Mr. Kobylnyk to two Complaints, including this specific Complaint #5.
104. Mr. Kobylnyk has never responded to this Complaint.

Finding on Guilt

105. In view of the complete lack of response by Mr. Kobylnyk to Complaint #5, the Committee finds him guilty of citation 19.

Citation 20: Breach of Undertaking

106. The breach of citation 19 constitutes a breach of the Undertaking.

COMPLAINT #6

107. This Complaint relates to another unpaid account owed by Mr. Kobylnyk to a court reporter.

Citation 21: Failed to promptly meet financial obligations in relation to his practice

Background Facts

108. Mr. Kobylnyk's firm engaged the services of a court reporter on three separate occasions between April and July of 2019. A bookkeeper with the court reporter attempted to call Mr. Kobylnyk on June 27, 2019, July 4, 2019 and August 12, 2019, and in each case left voicemail messages.
109. The court reporter then mailed copies of the three outstanding invoices to Mr. Kobylnyk in October 2019 and again on November 6, 2019. On November 19, 2019 the court reporter sent a demand email advising that if payment was not made that she would contact the LSA. A message was also left at this same time by the court reporter at Mr. Kobylnyk's firm requesting payment. Payment was apparently made on two of the invoices, but not on the third invoice.
110. Mr. Kobylnyk referred to his prior explanation in respect of Complaint #3 for his non-payment of these accounts, namely that it was the client's responsibility to pay the accounts.

Finding on Guilt

111. As stated earlier, section 7.1-2 of the Code of Conduct, requires a lawyer to "promptly meet financial obligations in relation to his or her practice ...". Given the failure to pay the outstanding account the Committee finds Mr. Kobylnyk guilty of citation 21.

Concluding Matters

112. The Committee finds that citations 1 to 3 and 5 to 21 have been proven on a balance of probabilities and the conduct of Mr. Kobylnyk is deserving of sanction. Accordingly, the Committee will convene a hearing to hear submissions on sanction, costs, notices and any other outstanding issues.
113. 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. Kobylnyk will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated August 30, 2023.

Bud Melnyk, KC – Chair and Bencher

Levonne Louie – Lay Bencher

Sanjiv Parmar - Bencher