IN THE MATTER OF PART 2/3 OF THE
***LEGAL PROFESSION ACT*, RSA 2000, c. L-8**

AND

IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
REGARDING MARCIA L. JOHNSTON, QC
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Resignation Committee

Buddy Melnyk, QC - Chair (Bencher)
Ryan Anderson, QC - Committee Member (Bencher)
Elizabeth Hak - Committee Member (Lay Bencher)

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Marcia Johnston – Self-Represented

Hearing Date

June 29, 2020

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. Marcia L. Johnston, QC applied for resignation from the Law Society of Alberta (LSA) pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c. L-8 (the *Act*). Because Ms. Johnston's conduct is the subject of citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application.

2. At the time of this application Ms. Johnston was an inactive member of the LSA and she had no disciplinary record with the LSA. Ms. Johnston had been admitted as a member of the LSA on May 10, 1985 and she became inactive on July 4, 2019. During Ms. Johnston's 34 years as a lawyer she practiced in a variety of settings, including as in-house counsel, as a sole practitioner, in a small firm and in a large firm.

3. After reviewing all of the evidence and exhibits, and hearing the arguments of the LSA and Ms. Johnston, the Committee allowed the application pursuant to section 32 of the *Act* with oral reasons and advised that a written decision would follow. This is that written decision.

4. In addition, the Committee ordered that the Ms. Johnston shall pay costs of the Resignation Application and in accordance with Rule 92(7) such costs are to be paid prior to any later application for reinstatement.

5. It was also ordered, for the reasons set out below, that the following paragraphs of the Statement of Admitted Facts and Admissions of Guilt (Statement) be redacted:

   (a) Emails reproduced in paragraphs 19, 22, 24, 26, 28, 31, 49, 56, 57, 58, 59, 60, 70, 94, 104, 106, 107, 108, 109, 113 and 118 of the Statement shall be redacted, but not the explanatory sentences that precede each of these emails; and

   (b) Paragraphs 29, 32, 36, 37, 38, 43, 51(c)(2) and 89 in their entirety.

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction.

Private Hearing Applications

7. The LSA served a total of 15 persons, including the member, with Private Hearing Application Notices. At the commencement of proceedings private hearing applications were made by [EN], [VN] and the LSA.

LSA Application

8. The LSA sought to have email communications between Ms. Johnston and any of the beneficiaries be redacted as being private communications between lawyer and client and therefore subject to solicitor-client privilege. In addition, the LSA applied to have paragraph 89 redacted as it revealed solicitor-client information. Ms. Johnston was in agreement with these applications.

9. The Committee agrees with the submissions of LSA counsel and accordingly orders as follows:

   (a) Emails reproduced in paragraphs 19, 22, 24, 26, 28, 31, 49, 56, 57, 58, 59, 60, 70, 94, 104, 106, 107, 108, 109, 113 and 118 of the Statement shall be redacted, but not the explanatory sentences that precede each of these emails; and

   (b) Paragraph 89 shall be redacted in its entirety.

[EN] and [VN] Applications

10. [EN] and [VN] made private hearing applications to have the entire hearing held in private. These two individuals, as former clients of Ms. Johnston, were concerned about documentation and facts arising in these proceedings that would be subject to solicitor-client privilege. Both these persons advised that there was ongoing litigation involving lands which Ms. Johnston previously held in trust. However, this litigation did not involve any of the beneficiaries. No concerns were expressed by either [EN] or [VN] that the information arising from this Application would be used by any of the parties in the ongoing litigation dispute.

11. Authority for holding hearings in private arises under section 78 of the *Act* and Rule 98. Section 78 of the *Act* grants a Hearing Committee discretion to direct that all or part of the hearing be held in private. The relevant parts of this section state:

> *78(1) The Public may attend and observe a hearing before a Hearing Committee or an application under section 61 or an appeal under section 76 except to the extent that the hearing is directed to be held in private under subsection (2).*
>
> *(2) The Hearing Committee or the Benchers, as the case may be, on their own motion or on the application of the member concerned, the complainant, any person expected to be a witness at the hearing or any other interested party at any time before or during the proceedings, may, subject to the rules, direct that all or part of the hearing is to be held in private.*

12. Rule 98 also provides authority for this Committee to allow for hearings to be held in private by way of application under section 78(2) of the *Act*.

13. The competing criteria for determining if a private hearing is warranted are “transparency” and the need to “protect compelling privacy interests”. This principle is set out in paragraph 9(a) of the Hearing Guide, which states:

> *9(a) In the interests of transparency, hearings should be open to the public – except to the extent necessary to protect compelling privacy interests*.

14. This balancing between “transparency” and “privacy interests” was succinctly stated at paragraph 36 in the matter of *Law Society of Alberta v Forsyth-Nicholson*, 2016 ABLS 52:

> *In the application for a private hearing pursuant to section 78(2) of the LPA [the Act], it is therefore our role to weigh two potentially competing public interests, namely:*
>
> *a) The public interest in the transparency to the public and to the profession of LSA disciplinary and conduct hearings; and*
>
> *b) the public interest in having the LSA protect compelling privacy interests in those same disciplinary and conduct hearings.*

15. Section 112 of the *Act* provides additional protection for privileged information. Where the application for a private hearing raises issues of solicitor-client privilege, then reference to sub-section 112(2) of the *Act* is necessary:

> *112(2) If a member is required under subsection (1) to give evidence, answer inquiries or produce or make available any records or other property pursuant to subsection (1) and the member may claim solicitor and client privilege in respect of the evidence, answers, records or other property, the member or any other person who may claim the solicitor and client privilege may require that*
>
> *(a) all or part of any proceedings under Part 3 or 4 in which the evidence, answers, records or other property is dealt with be held in private, and*
>
> *(b) the public be refused access to the records and other property and to any other document containing the evidence or answers.*

16. Sub-section 112(2) makes it clear that if a member is required to disclose records that involve solicitor-client privilege, then the member, or any other person claiming solicitor-client privilege, may require that all or part of the proceedings be held in private or that the public be refused access to the records or documents which contain such privileged records or documents.

17. The Hearing Guide, section 9(c), further elaborates this point by stating that such privilege is a compelling privacy interest that must be protected:

> *9(c) Protection of legal privilege and solicitor-client confidentiality are compelling privacy interests which must be protected unless they are expressly waived by the appropriate person(s). Neither the making of a complaint to the LSA, nor the failure to respond to a Private Hearing Application Notice Constitutes an express waiver.*

18. Sub-section 112(2) of the *Act* requires that all parts of a hearing during which reference will be made to evidence over which either [EN] or [VN] claims privilege be held in private. The onus is on [EN] and [VN] to prove that a proper claim of privilege exists and once this privilege is established over evidence to be heard at the resignation application, then this Committee is bound to grant the private hearing application.

19. In order for the Committee to properly determine what information in the Statement might constitute privileged information, we have considered the following conditions necessary to establish solicitor-client privilege:

> (a) a communication between lawyer and client;
>
> (b) which entails the seeking or giving of legal advice; and

(c) which is intended to be confidential by the parties.

Solosky v. The Queen, [1980] 1 S.C.R. 821 at page 837.

20. There are of course exceptions to solicitor-client privilege and such privilege does not apply where the communication is not intended to be confidential (*Solosky v. The Queen*, [1980] 1 S.C.R. 821 at page 835). It is also important to understand that privilege belongs to the client and can only be waived by the client, or through his or her informed consent (*Lavallee, Rackel & Heintz v. Canada,* [2002] 3 S.C.R. 209 at paragraph 39). The voluntary disclosure by a client to a third party by itself would therefore be indicative that the client intends waiver of that privilege.

21. Given the foregoing legal aspects regarding privilege this Committee has carefully reviewed and parsed the Statement to determine what might constitute solicitor-client privileged information or statements. Based on this review it is directed that the following paragraphs from that Statement be redacted as potentially being subject to solicitor-client privilege:

Paragraphs 29, 32, 36, 37, 38, 43 and 51(c)(ii).

22. As regards the balance of the Statement paragraphs, it is this Committee's opinion that the information disclosed in those remaining paragraphs do not amount to or raise an issue of solicitor-client privilege. In this Committee's view the information in the Statement, other than that which is to be redacted, is information that was disclosed to third parties or which otherwise was within the public realm. The Committee noted that many of the documents or records at issue are, in fact, public or nearly public documents.

23. This Committee also takes note of the redaction policy of the LSA, which provides guidance to the LSA to redact actual names. The Committee was satisfied that the LSA's redaction policy would provide further necessary protection to [EN] and [VN] over other matters of solicitor-client privilege.

24. Accordingly, the Committee directed that the hearing be held in public subject to the foregoing redactions in the Statement. A public hearing into Ms. Johnston's resignation application proceeded.

Statement of Admitted Facts and Admissions of Guilt

25. Ms. Johnston provided a Statement of Admitted Facts and Admissions of Guilt. The Committee finds same to be in an acceptable form and the redacted Statement is appended to this Report. Ms. Johnston faced a total of nine citations arising from two

complaints as outlined in the Statement as provided to this Committee. The citations were as follows:

CO20181502

1. It is alleged Marcia L. Johnston acted while in a conflict of interest;

2. It is alleged Marcia L. Johnston failed to advise her vendor clients about criminal charges laid against the principals of the purchasing company;

3. It is alleged Marcia L. Johnston failed to act in a timely manner to have her clients' interest registered on title;

4. It is alleged Marcia L. Johnston failed to respond to her clients in a timely manner;

5. It is alleged Marcia L. Johnston inappropriately disclosed client information;

6. It is alleged Marcia L. Johnston inappropriately disclosed the details of a Law Society complaint;

7. It is alleged Marcia L. Johnston failed to notify her clients in a timely manner of the opposing party's late payment of closing funds;

8. It is alleged Marcia L. Johnston failed to disburse sale proceeds to her clients in a timely and accurate manner;

CO20190185

9. It is alleged Marcia L. Johnston failed to comply with Trust Safety requirements.

The Evidence

26. The evidence as set out in the redacted Statement on citations 1-8 can be briefly summarized as follows:

(1) Ms. Johnston was acting for nine registered charities who were residual beneficiaries under an estate. That estate was comprised of a parcel of land. Ms. Johnston entered into a Declaration of Trust with the residual beneficiaries regarding the sale of these lands.

(2) The lands were listed for sale and a corporation, [L], offered to purchase the lands. [L] had two shareholders, [VN] and [EN], though they were not directors since they were both discharged bankrupts. [M] was incorporated on the same day as [L], with [L] being the 100% shareholder.

(3) A news story reported that [VN] and [EN] had been charged with fraud (involving a separate development). Ms. Johnston was aware of the charges but failed to alert

the charities. One of the charities raised a concern with the other beneficiaries about the pending criminal charges against [VN] and [EN]. Due to these concerns the beneficiaries rejected the [L] offer.

(4) Following this rejection [L] assigned its rights to the Purchase Contract to [H].

(5) Ms. Johnston, and her husband, became "good friends" with [VN] and [EN]. Since [EN] and [VN] could not act as directors of [L] or [M] Ms. Johnston agreed to become a director for these companies in the hopes of working with [VN] and [EN] in the future. Ms. Johnston never advised the charities of her personal friendship with [VN] and [EN], that she was a director for the companies controlled by [VN] and [EN] or that [VN] and [EN] continued to work on the land project.

(6) [H] made an offer to purchase the lands. The lands were transferred to [H] and the outstanding purchase balance was secured by a Promissory Note for which a caveat was to be registered on title. The charities agreed to the offer, but they wanted the caveat to be registered in second position behind [H]'s primary lender.

(7) The title was transferred, but the caveat was not registered until about five months later due in part to delays by Ms. Johnston. However, by the time the caveat was registered it was not in second place on title. In the intervening time period two other instruments were registered on title, including a builder's lien. That lien was filed by [M] and Ms. Johnston failed to alert the beneficiaries of the builder's lien and as a director of [M] she had authority to remove the lien, but she took no such action.

27. The evidence as set out in the redacted Statement on citation nine is in respect of the failure of Ms. Johnston, as the Responsible Lawyer, failed to comply with accounting rules by not submitting accounting records for the period from 2014 to 2017.

The Submissions of the Parties

28. Ms. Johnston provided the Committee with her practice background and the factors which led to the issues in this matter. Ms. Johnson explained that she had no experience in litigation matters and that her practice was largely confined to corporate, commercial and securities law. In these legal areas it is often common practice to work collaboratively with other counsel and parties. Ms. Johnston emphasized that she was not trying to excuse her actions and that she took full responsibility for her failures. Ms. Johnston was not aware of any actual harm befalling any of the beneficiaries though she acknowledged that the conflict did in fact injure the beneficiaries.

29. Counsel for the LSA advised that the actions of Ms. Johnston blurred her role with the client beneficiaries. The personal interest and relationship of Ms. Johnston with [VN] and [EN] meant that Ms. Johnston did not have the best interests of her clients at heart. Ms.

Johnston failed to comply with the instructions and directions from the beneficiary clients. Counsel noted that for mitigation Ms. Johnston had no prior disciplinary record, and while these citations would have likely resulted in a significant suspension, they would likely not have resulted in a disbarment.

Analysis

30. LSA counsel supported Ms. Johnston's application for resignation, agreeing that Ms. Johnston's resignation pursuant to section 32 of the *Act* served the public interest. As such, the Committee considered this application to be tantamount to a joint submission and therefore deserving of deference, unless it was demonstrably unfit or unreasonable, or contrary to the public interest.

31. The primary purpose of disciplinary proceedings is found in section 49(1) of the *Act*: (1) the protection of the best interests of the public (including the members of the Society) and (2) protecting the standing of the legal profession generally. Under the *Act*, a member may apply to resign under either section 32 or section 61. There is a material distinction between these applications. Pursuant to section 61 of the *Act*, the member's resignation amounts to a deemed disbarment if accepted. Under section 32 of the *Act*, the application is merely one of resignation.

32. Regardless of whether the application for resignation is made under section 32 or section 61, the fundamental issue to be determined by this Resignation Committee is whether it is in the best interests of the public and in the interests of the profession to permit the lawyer to resign prior to the resolution of the outstanding conduct matters. In considering whether to accept an application for resignation this Committee considered the following:

    (a) The nature of the lawyer's conduct and whether it would likely result in disbarment if the matter were to proceed to a hearing and the citations proved; and

    (b) Whether there are any disputed facts or other factors in Part VI of the Hearing Guide that could be taken into account by a Hearing Committee and which would mitigate against disbarment and make it an unlikely outcome if the matter proceeded to a hearing.

33. The Committee agrees that the conduct is certainly serious, and would likely amount to sanctionable conduct, but the Committee is not of the view that the conduct would have likely resulted in a disbarment. In reaching this conclusion the Committee has considered the following mitigating factors:

    (a) There is no evidence to suggest that Ms. Johnston is not governable, especially in view of her long legal career.

(b) There is no prior disciplinary record.

(c) There is no evidence that the member acted intentionally, knowingly or recklessly.

(d) There is no evidence of actual harm to the public or clients, though the potential for such harm was very real.

(e) Ms. Johnston was very remorseful for her conduct and she willingly acknowledged her wrongdoing by entering into a guilty plea.

(f) There was no breach of trust or integrity concerns.

(g) While there was no express evidence in the Statement, Ms. Johnston indicated that she had experienced some substantial personal issues during the period of time when the citations arose, which personal issues are ongoing.

Decision

34. The Committee finds that the Statement of Admitted Facts and Admissions of Guilt (subject to the redactions as ordered in paragraph 5 herein) is in an acceptable form.

35. Based on the evidence established by the Statement, the Committee determined that it was in the best interests of the public to accept the application of Ms. Johnston to resign pursuant to section 32, effective June 29, 2020.

36. The Committee accepted the undertakings made by Ms. Johnston.

37. The Committee has reviewed the costs of hearing this application, as prepared by the LSA, which costs Ms. Johnston agreed were reasonable. The Committee has determined that Ms. Johnston must pay these costs prior to any later application for reinstatement.

38. Pursuant to subsection 32(2) of the *Act*, Ms. Johnston's name will be struck off the roll. The roll shall reflect that Ms. Johnston's application under section 32 of the *Act* was allowed on June 29, 2020.

Concluding Matters

39. 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 Ms. Johnston will be redacted and

further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)), including those redactions as ordered in paragraph 5 herein.

40. A Notice to the Profession will be issued.

41. A Notice to the Attorney General is not required.

Dated at Calgary, Alberta, this 10th day of July, 2020.

_____

Buddy Melnyk - Chair

_____

Ryan Anderson

_____

Elizabeth Hak

Schedule 1

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY
MARCIA L. JOHNSTON, Q.C.
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE HE20190195

STATEMENT OF ADMITTED FACTS AND ADMISSIONS OF GUILT

BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the "**LSA**") on May 10, 1985.

2. For 34 years, I practiced in a variety of settings including as an in-house lawyer, as a sole practitioner, in a small firm, and in a large firm. My practice consisted primarily of corporate and securities-related legal work.

3. On July 4, 2019, I became an inactive member of the LSA.

APPLICATION FOR RESIGNATION

4. I am applying to resign as a member of the LSA.

5. My application arises out of two complaints comprising nine citations.

6. I am making this application to avoid a lengthy hearing, to prevent inconvenience to witnesses and panel members, and to bring these complaints to a conclusion.

ADMISSIONS

7. I admit as facts the statements contained in this Statement of Admitted Facts. Where I make specific admissions to conduct described herein:

    a. I am admitting that the described conduct is "conduct deserving of sanction" as defined in section 49 of the *Legal Profession Act* (the "***Act***");

    b. I understand the nature and consequences of the admissions; and

    c. I am making the admissions freely and voluntarily, without any compulsion or duress

THIS STATEMENT OF ADMITTED FACTS AND ADMISSIONS OF GUILT IS MADE THIS 10th DAY OF February 2020.

"Marcia Johnston"
MARCIA L. JOHNSTON, Q.C.

COMPLAINT #1: LSA (CO20181502)

Procedural Background

8. On June 4, 2018, I submitted a complaint to the LSA about another lawyer's conduct, in which I reported delay on my part.

9. The LSA investigated my handling of the matter, which resulted in an Investigation Report dated January 29, 2019, and a referral to the Conduct Committee.

10. On July 16, 2019, the Conduct Committee directed that the following eight citations be dealt with by a Hearing Committee:

    1. It is alleged Marcia L. Johnston acted while in a conflict of interest and that such conduct is deserving of sanction.

    2. It is alleged Marcia L. Johnston failed to advise her vendor clients about criminal charges laid against the principals of the purchasing company and that such conduct is deserving of sanction.

    3. It is alleged Marcia L. Johnston failed to act in a timely manner to have her clients' interest registered on title and that such conduct is deserving of sanction.

    4. It is alleged Marcia L. Johnston failed to respond to her clients in a timely manner and that such conduct is deserving of sanction.

    5. It is alleged Marcia L. Johnston inappropriately disclosed client information and that such conduct is deserving of sanction.

    6. It is alleged Marcia L. Johnston inappropriately disclosed the details of a Law Society complaint and that such conduct is deserving of sanction.

    7. It is alleged Marcia L. Johnston failed to notify her clients in a timely manner of the opposing party's late payment of closing funds and that such conduct is deserving of sanction.

    8. It is alleged Marcia L. Johnston failed to disburse sale proceeds to her clients in a timely and accurate manner and that such conduct is deserving of sanction.

Citation 1: It is alleged Marcia L. Johnston acted while in a conflict of interest and that such conduct is deserving of sanction

Statement of Facts

11. In September 2010, I was retained to act as the joint legal counsel for nine registered charities who were the residual Beneficiaries of the Estate of MJ (the "**Beneficiaries**").

12. The Estate consisted primarily of a detached garage on a 4.3-acre parcel of land located on Highway […] (the "**Lands**"). At the time of death, the Lands were designated Urban Reserve.

13. By Court Order dated March […], 2013, the Lands were transferred to me personally to hold in trust for the Beneficiaries.

14. On April 17, 2013, the Beneficiaries and I entered a Declaration of Trust in which my duties regarding the sale of the Lands and distribution of the proceeds were set out. The Lands were listed for sale shortly thereafter.

15. In August 2014, a corporation named [L] offered to purchase the Lands. [L] had been incorporated in June 2014 with two key representatives, [VN] and [EN], each of whom were 50% shareholders of [L]. Pursuant to section 105(1)(d) of the *Alberta Business Corporations Act*, neither [VN] nor [EN] could act as Directors of [L], or of any other corporation, because they were undischarged bankrupts having both made assignments into bankruptcy in November 2010.

16. On August 11, 2014, I made a counter-offer on behalf of the Beneficiaries which gave [L] an option to purchase the Lands at a preset price for a term of 750 days during which the Lands would remain listed for sale. [L] was also provided a right of first refusal to match any offer from another purchaser. [L] accepted the counter-offer.

17. The following year, on July 15, 2015, the parties entered into a Purchase Contract and Interim Agreement (the "**Purchase Contract**"), which replaced the August 11, 2014 option agreement. [L] had until July 31, 2016, to waive its closing conditions. The Purchase Contract was amended three more times in the following two years.

18. On […], 2016, an article appeared on […] News reporting that [VN] and [EN] had been charged with fraud regarding a past, separate development venture. I was aware of the charges but failed to alert the Beneficiaries to their existence, details of which are set out in the admitted facts relating to Citation #2.

19. On August 11, 2016, as part of my communications about the […] Article, I sent an email to the charities, which stated the following in part:

    […]

20. Regarding this email,

    a. [VN] and [EN] were in fact shareholders of [L] whereas I thought that [L] was a subsidiary of a company named [M]; and

    b. MI was incorporated on the same day as [L], with [L] as its 100% shareholder. [M] would later have its name changed to [M].

21. On October […], 2016, the […] Town Council turned down [L]'s application to rezone the Lands for residential development.

22. Two days later, on October 13, 2016, in response to an inquiry from one of the Beneficiaries, I stated the following:

    […]

23. As noted, [VN] and [EN] were in fact shareholders of [L].

24. On October 17, 2016, [L] made an offer to extend the Purchase Contract, described as follows in My email to the Beneficiaries:

    […]

25. Pursuant to the terms of the Declaration of Trust, [L]'s offer was put to a vote.

26. On October 18, 2016, the Executive Director of one of the local charities (the "**Charity**") emailed the other Beneficiaries to express concern about [VN]'s and [EN]'s continued involvement:

    […]

27. On October 19, 2016, offer from [L] was rejected by the Beneficiaries, with three charities holding more than 50% of the percentage interest voting against it.

28. Later that day, I emailed the Beneficiaries as follows:

    […]

29. […]

30. On October 26, 2016, [L] assigned its rights to the Purchase Contract to [H] pursuant to an Agreement of Purchase, Assignment, and Transfer.

31. On October 28, 2016, I sent the following email to the update the Beneficiaries about my meeting with JP, legal counsel for the Charity, and explaining the involvement of [H] in the deal:

    […]

32. […]

33. On October 29, 2016, [H] and I entered into a Purchase Contract and Interim Agreement (the "**[H] Purchase Contract**"), which I had drafted, in which [H] agreed to pay a purchase price of $972K plus an additional $18K for each 90-day period starting on August 6, 2015. There was also a deposit of $120K payable in instalments. [H] was given until October 31, 2017, to obtain the necessary redevelopment permits, failing which the [H] Purchase Contract would be terminated.

34. During the previous two years, my husband and I had become good friends with [VN] and [EN], who told me that they would eventually want me to become their corporate counsel. Around then, [VN] and [EN] became aware that they could not act as corporate directors because of their status as undischarged bankrupts, and they asked me to become the director of [L] and [M]. For that reason, and in the hope of working with them in the future, on November 14, 2016, I agreed to become the Director of [L] and [M] thereby permitting [VN] and [EN] to keep operating under the corporate shield of both entities.

35. I never told the Beneficiaries of the extent of my personal friendship with [VN] and [EN] or of my acceptance of these two Directorships because of the hostility of the Charity to [VN] and [EN].

36. […]

37. […]

38. […]

39. On June 8, 2017, I took steps to have the name of [M] changed to [M] in the Alberta Corporate Registry. I remained as the Director of [M].

40. On September 19, 2017, I received a proposal from [H] in which [H] agreed to purchase the Lands for $1.115MM, half of which ($557K) would be paid on October 28, 2017, and half of which would be paid upon a successful rezoning application. The Lands would be transferred to [H] upon payment of the first $557K and the outstanding debt would be secured by a Promissory Note (the "**Secured Promissory Note**") for which a Caveat would be registered on title (the "**Caveat**").

41. On September 19, 2017, I sent an email to the Beneficiaries regarding the proposal.

42. On September 22, 2017, the Charities approved an amended proposal by [H], the general provisions of which were as described above, but which also provided that the Secured Promissory Note would be registered on title in second position behind the mortgage for [H]'s primary lender, a corporation known as [B], which would be registered in first place.

43. […]

44. On October 18, 2017, I delivered the executed transaction documents to AJ, counsel for [H].

45. On November 15, 2017, a $700K mortgage in favour of [B] was registered on title in first position.

46. On May 7, 2018, after a delay of several months, the Caveat was registered. The facts underlining this delay are discussed in the statement of Facts related to Citation #3.

47. However, by then, the Caveat could not be registered in second place. Between November 15, 2017, and May 7, 2018, two instruments had been registered in priority to the Caveat, which put the Caveat in fourth position:

a. The first intervening instrument (in second place) was an Amending Agreement registered on April 4, 2018, in favour of [B]. This Amending Agreement affected the original mortgage to [B] and added an additional $100K to the amount owing by [H] to [B]; and

b. The second intervening instrument (in third place) was a Builder's Lien for $93K registered by [M] on May 1, 2018.

48. Particulars of the Builders' Lien are that:

a. [EN] registered the Builders' Lien on behalf of [M];

b. I was advised that the Builders' Lien had been filed;

c. I did not alert the Beneficiaries of the existence of the Builders' Lien after I was told it had been registered; and

d. Despite being the Director of [M] and having authority to direct the removal of the lien, I took no steps to have it removed from title and suggested that that it was for AJ to do so.

49. On May 24, 2018, after receiving a copy of the Certificate of Title, I emailed JP:

[…]

50. I did not mention the Builders' Lien in this email, a fact that was discovered by JP only upon reviewing the Certificate of Title on May 31, 2018, following which he emailed the other Beneficiaries. However, even though JP became aware of the name of Builders' Lien claimant, I never told him, or any of the other Beneficiaries, that I was the Director of [M], the purported lienholder, at the time.

Admissions of Guilt

51. I admit that I acted in a conflict of interest by failing to disclose to the Beneficiaries that [VN] and [EN] would continue to be involved in the development project, particulars of which include:

a. Over time, I became good friends with [VN] and [EN]. I wanted them to able to recoup the expenses and time that they put into [L]'s failed rezoning application and hoped to work with them in the future or become their counsel;

b. I knew that there were objections to the continued involvement of [VN] and [EN] in the project, including on October 19, 2016, when the Beneficiaries rejected an offer from [L] because three of the Beneficiaries with a voting majority objected to the continued involvement of [VN] and [EN];

c. Despite the objections to the continued involvement of [VN] and [EN] in the project, I took steps to ensure that they would continue to be involved in the project, none of which were disclosed to the Beneficiaries, including:

i. Agreeing to act as the Director of [L], [M]/[M], and of the Numbered Company, thereby allowing [VN] and [EN] to keep working on the project under the corporate veils of these entities; and

ii. […]

d. In summary, there was a substantial risk that my loyalty to, or representation of, the Beneficiaries was materially and adversely affected by my friendship with [VN] and [EN] and my desire to ensure their continued involvement in the project, which I failed to disclose to the Beneficiaries, contrary to Rule 2.04(1) of the *Code*, which became Rule 3.4-1 of the *Code* and paragraphs 1 to 5 and 7 to 11 to the commentary thereto.

52. I admit that I acted in a conflict of interest by taking no action when [M] filed a Builder's lien against title to the Lands, particulars of which include:

a. On November 14, 2016, at the request of [VN] and [EN], I became the Director of [M] (which later became [M]), to which I owed a fiduciary duty;

b. On May 1, 2018, [M] filed a Builders' Lien against title to the Lands;

c. In permitting the Builders' Lien to be registered, I preferred the interests of [M] over those of the Beneficiaries as follows:

i. The Builders' Lien displaced the Caveat on title by one priority position; and

ii. I took no action to have the Builders' Lien removed from title after having learned about its filing, despite having the authority to do so as the Director of [M].

d. Additionally, I failed in my duty of candour to the Beneficiaries as follows:

i. On May 24, 2018, I failed to mention the Builders' Lien in my email to JP;

ii. On May 31, 2018, I failed to disclose that I was the Director of [M] after JP mentioned the Builders' Lien in an email to the other Beneficiaries; and

iii. To this day, I have never disclosed to the Beneficiaries that I was the Director of [M] at the time the Builders' Lien was registered.

e. In summary, there was a substantial risk, which eventually materialized, that my fiduciary duties to [M] would materially and adversely affect my fiduciary duties to the Beneficiaries, all of which was contrary to Rule 2.04(1) of the *Code*, which became Rule 3.4-1 of the *Code* and paragraphs 1 to 5 and 7 to 11 to the commentary thereto.

Citation 2: It is alleged Marcia L. Johnston failed to advise her vendor clients about criminal charges laid against the principals of the purchasing company and that such conduct is deserving of sanction

Statement of Facts

53. On […], 2016, an article appeared on […] News which reported that [VN] and [EN] had been charged with fraud in relation to a separate land development venture. The article reported investor losses of $33MM.

54. [VN] and [EN] called me to alert my that they had been charged with fraud. I did not notify the charities about the charges.

55. […] months later, on August 8, 2016, JP emailed me to ask about the fraud charges and their effect on the transaction, stating in the email, "*… I think the charities should have been informed of this development.*"

56. On August 11, 2016, I emailed all of the charities as follows:

[…]

57. In response to my email, a representative of the Charity emailed as follows:

[…]

58. Shortly thereafter, I replied:

[…]

59. Which prompted a second response from the representative:

[…]

60. Two days later, in response to an inquiry from the representative of another of the Beneficiaries, I stated the following:

[…]

61. In a written response dated September 11, 2018, I noted the following about the impact of the charges on the rezoning application:

[…]

62. During my interview with Law Society investigators on December 7, 2018, I repeated this sentiment:

> Well I think Town Council was leaning toward turning it down anyway but that sort of put the nail in the coffin.

Admission of Guilt

63. I admit that I failed in my duty of candour to the Beneficiaries by failing to inform them of the criminal charges against [VN] and [EN], contrary to Rule 2.02(2) of the *Code*. In particular,

a. The criminal charges against [VN] and [EN] were material and relevant to the re-zoning applications; and

b. The criminal charges were material and relevant to the Beneficiaries because of their unique status as charities, which involves public perception of those representing their interests.

64. **Citation 3: It is alleged Marcia L. Johnston failed to act in a timely manner to have her clients' interest registered on title and that such conduct is deserving of sanction**

Statement of Facts

65. On October 18, 2017, I delivered the transaction documents to AJ, counsel for [H].

66. As discussed, one of the documents was the Caveat which was to be submitted to the Land Titles Office for registration.

67. In my cover letter, I imposed the following trust condition on AJ:

> Also, the Caveat listed as #2 above, is to be filed as an encumbrance on [H]'s title second only to [H]'s $700,000 financing, and the two Discharges are to be filed with the Transfer.

68. On November 2, 2017, AJ submitted the Caveat to the Land Titles Office.

69. On November 17, 2017, the Caveat was rejected by the Land Titles Office.

70. On November 21, 2017, AJ emailed me about the rejection, asking my how I would like to proceed. I responded later that day that I would take steps to contact the Land Titles reviewer myself.

71. On December 6, 2017, JP emailed I and asked about the status of the Caveat, noting that the Caveat had not yet been registered on title. I replied to him later that day:

> […]

72. In fact, there had only been one rejection from the Land Titles Office.

73. On December 18, 2017, JP followed up by email, asking about the status of the Caveat.

74. On December 20, 2017, I emailed AJ and asked him to re-send the rejection notice from the Land Titles Office, which I had misplaced because I had recently moved.

75. On December 30, 2017, I replied to JP that I had not yet been able to contact the reviewer at the Land Titles Office.

76. On February 10, 2018, JP again followed up. Receiving no immediate response, he followed up again on February 15, 2018. I replied that day stating that I had had no luck in contacting the reviewer.

77. On April 20, 2018, the Caveat was re-drafted, signed by me and witnessed by AJ, who submitted it to the Land Titles Office on April 24, 2018.

78. On April 20, 2018, JP asked for an update on the status of the Caveat, to which I replied that I had managed to contact the Land Titles Office the previous day and that a slightly revised Caveat had been delivered to AJ for filing. JP then asked for a copy of the Certificate of Title once the Caveat had been filed, to which I agreed.

79. On May 7, 2018, the Caveat was registered on title.

80. On May 14, 2018, JP followed up again about the filing of the Caveat, to which I did not reply.

81. On May 24, 2018, JP emailed me to advise me that in the absence of an update from me, he had been instructed to file a Caveat on title to protect his client's interest under the Secured Promissory Note. Later that day, I emailed JP to advise him that I had received a Certificate of Title from AJ, which showed the two intervening encumbrances discussed in the particularization to Citation 1.

82. On May 25, 2018, I emailed JP and acknowledged the delay in filing the Caveat was as much my problem as AJ's.

83. In my correspondence to the Law Society and during my interview with Law Society investigators, I acknowledged my delay in providing the Caveat for registration.

Admission

84. I admit that I failed to take steps to have the Caveat registered for a period of five months, from November 21, 2017 to April 20, 2018, contributing to the Caveat being registered in fourth position instead of second position, which was contrary to Rule 3.2-1 of the *Code*.

Citation 4: It is alleged Marcia L. Johnston failed to respond to her clients in a timely manner and that such conduct is deserving of sanction

Statement of Facts

85. As set out in the admission to Citation 3, I failed to respond, or to respond promptly, to the following emails from JP about the status of the registration of the Caveat:

    a. An email dated December 18, 2017, to which I responded twelve days later, on December 30, 2017 (after reaching out to AJ for a copy of the rejection notice which I had misplaced); and

b. An email dated May 14, 2018, to which I did not reply, prompting him to send another email on May 24, 2018, in which he advised that his client had instructed him to file its own Caveat.

86. Additionally, as set out in the admission to Citation 8,

a. I failed to respond, or to respond promptly, to the following emails about the distribution of the sale proceeds:

i. An email from JP dated November 21, 2017, to which I did not reply;

ii. An email from JP dated November 28, 2017, to which I did not reply, prompting him to issue a demand letter dated November 30, 2017, for payment by December 4, 2017; and

iii. An email from BJ dated January 31, 2018, to which I replied 20 days later on February 20, 2018.

Admission

87. In summary, I admit that I failed to reply, or failed to reply promptly, to the above-noted communications from my clients, which was contrary to Rule 3.2-1 of the *Code*.

Citation 5: It is alleged Marcia L. Johnston inappropriately disclosed client information and that such conduct is deserving of sanction

Material Facts

88. On September 1, 2017, I sent the following email to AS, the principal of [H]:

> … The last time you gave your cheque to [AJ] - after the deadline to get it to me - he took another 4 days to get it into my trust account. I was just fortunate that this was the ONLY due date that I did not get a question from [Charity] director as to whether I had received it. This is why it is SO important that if I get a call on Tuesday, as I expect, I can truthfully say that I have it. …

89. […]

90. On September 21, 2017, while the amended proposal by [H] was being considered by the Beneficiaries, I sent the following email to AS:

> …
> Approvals from two Minority Interests were received immediately. Then critical letter received outline the risks of 2nd mortgages and various ways they could be thwarted and saying [Charity] Board would only approve a transaction where the charities would have a first secured position. Another response from a Minority Interest with an experienced manager of selling lands left to his charity, agreeing with risks of 2nd mortgages, and suggesting the alternative of accepting a firm purchase price of the $557,500 cash at closing and retaining an interest for more when and if the land is ever rezoned. Meanwhile another Minority Interest approved the first proposal and then [Client] and another Minority Interest approved the amendment suggested by the experienced Minority Interest.

…
As it stands now, this proposal has been approved by [Client] and 2 Minority Interests. I have requested confirmation of approval from the other 2 charities that initially approved the first proposal or a [bank] 2nd mortgage to confirm approval of alternative, and requested the other 3 Minority interests to respond. [Charity] will evidently not approve anything with a second secured interest, but with [Client] on side, we don't need [Charity] if we have at least 4 of the Minority interests.
…

Admission

91. I admit that I inappropriately disclosed client information, which is contrary to Rule 3.3-1 of the *Code*, particulars of which are:

a. In my emails of September 1, 2017, and September 6, 2017, I revealed the identity of a client who usually calls me about the deposits, and that this client had not called that day, which is confidential information that should not have been shared with the principal of [H];

b. In my email dated September 21, 2017, I revealed the following solicitor-client and confidential information to the principal of [H]:

i. The status of the internal approvals from my clients, including the identities of which clients and their respective positions about the proposal;

ii. The identity of the Beneficiary that was critical of the deal; and

iii. Personal opinions critical about the Beneficiary's position and the fact that the support of that Beneficiary was unnecessary to ensure that the deal would be approved,

all of which is confidential information protected by solicitor-client privilege and should not have been shared with the principal of [H].

Citation 6: It is alleged Marcia L. Johnston inappropriately disclosed the details of a Law Society complaint and that such conduct is deserving of sanction

Statement of Facts

92. On June 5, 2018, I submitted a complaint against AJ for his failure to comply with my undertaking regarding the Caveat and permitting the Amending Agreement to be registered against title to the Lands.

93. The following day, on June 6, 2018, I sent an email to the Beneficiaries to which was attached a copy of the Law Society complaint form detailing my complaint against AJ.

94. On July 30, 2018, Conduct Counsel sent a letter to me, which noted the following:

Pursuant to Section 78(3) of the *Legal Profession Act*, all materials provided or to be provided to you by the Law Society are confidential, are provided to you only

> for the purpose of making full answer and defence to this complaint and must not be used in any other proceeding or for any collateral purpose.

95. On August 14, 2018, I sent an email to the Beneficiaries in which I provided an update of the complaint against AJ:

> […]

Admission

96. I admit that I inappropriately disclosed the details of a Law Society complaint against another lawyer, contrary to section 78(3) of the *Act*, which deems all complaints to be private.

Citation 7: It is alleged Marcia L. Johnston failed to notify her clients in a timely manner of the opposing party's late payment of closing funds and that such conduct is deserving of sanction

Material Facts

97. The [H] Purchase Contract contained a clause in which [H] agreed to pay a deposit of $120K pursuant to a payment schedule, the final payment of which ($45K) was due on September 1, 2017.

98. That day, AS, the principal of [H], emailed me as follows:

> Hi Marcia pls find attached a copy of the draft for the deposit due today. I am trying to get a hold of [AJ] my lawyer. I will have it to him as soon as I do. Thank you.

99. That evening, I responded as follows, noting that there had been a previous instance of a late payment that had not been reported to the Beneficiaries:

> Thank you, [AS], but I was supposed to have received it today! …
> The last time you gave your cheque to [AJ] - after the deadline to get it to me - he took another 4 days to get it into my trust account. I was just fortunate that this was the ONLY due date that I did not get a question from [Charity] director as to whether I had received it. This is why it is SO important that if I get a call on Tuesday, as I expect, I can truthfully say that I have it. …

100. On September 6, 2017, AJ emailed me as follows:

> I apologize for the delay, I've been out of the office on urgent matters for the last couple of days, but I can confirm that I have the final deposit amount for [AS] and will be depositing same into your trust account.

101. I replied as follows:

> This is okay with me, but will not be okay if any of the beneficiaries of my trust ask me if and when it was received by me. I tried to explain this to [AS], and he knows they are hostile towards his agreement and would love to find an excuse to say he terminated it ... But I was unable to convince him to bring it to me directly on the 1st with my written undertaking to hold it in trust under the sales agreement, or to

> get it to you in time to deposit in my account by the 1st! I tried to explain this to him when he was late with the last deposit, too. Fortunately I was never asked about that deposit, but it was the first time I had not been phone on the due date to make sure I had it in hand.

102. I never informed the Beneficiaries that [H] was in default of the [H] Purchase Agreement twice.

Admission

103. I admit that I deliberately failed to notify the Beneficiaries that [H] was late in paying the deposits on two occasions, contrary to my duty of candour under Rule 3.2-3 of the *Code*.

Citation 8: It is alleged Marcia L. Johnston failed to disburse sale proceeds to her clients in a timely and accurate manner and that such conduct is deserving of sanction

Statement of Facts

104. On October 26, 2017, I received the first half of the sale proceeds ($557K) in my trust account. That day, pursuant to the Retainer Agreement, I issued an account for $17,561.25 to myself.

105. On November 1, 2017, I emailed the Beneficiaries to explain that I would be delayed issuing their cheques until November 3, 2017:

> […]

106. On November 3, 2017, I paid two disbursements to third parties.

107. On November 13, 2017, JP sent me an email asking my when the proceeds would be disbursed. I responded the following day explaining that I recently had to move from my home but had almost finalized the amount of the distributions:

> […]

108. On November 21, 2017, JP followed up again as follows, to which I did not respond:

> […]

109. On November 28, 2017, JP followed up as follows, to which I did not respond:

> […]

110. On November 30, 2017, JP followed up again:

> […]

111. On December 3, 2017, I paid two more disbursements to third parties.

112. On December 4, 2017, I issued the disbursement cheques to eight of the nine Beneficiaries. BJ, the representative of the ninth Beneficiary based in the U.K. (the "**UK Charity**") had requested that payment be delayed until 2018.

113. On January 31, 2018, BJ followed up by email, inquiring when and how much the UK Charity was to receive. I did not respond to him and he followed up again on February 13 and 19, 2018.

114. On February 20, 2018, I replied, stating in part:

> […]

115. My explanation was incorrect. Had the error been attributable to a $5,000.00 accounting mistake, the final cheque to the UK Charity would have been $5,000.00 lower than the amount sent to the other Beneficiaries with the same percentage interest. However, these other Beneficiaries each received $36,693.84, whereas the UK Charity eventually received $17,415.94, a difference of $19,277.79, not $5,000.00.

116. On March 15, 2018, I was suspended from the practice of law for non-payment of membership fees, which I did not disclose to the Beneficiaries. I was reinstated on April 10, 2018.

117. By May 31, 2018, the UK Charity had not yet been paid. That day, BJ emailed the other Beneficiaries asking if they had received payment.

118. On June 6, 2018, BJ emailed me to confirm the payment date. I replied two days later, advising that I would be sending the money on June 12, 2018.

119. On June 14, 2018, BJ emailed the other Beneficiaries to advise that the UK Charity had not yet received the money. That day, I replied as follows:

> […]

120. On June 21, 2018, a cheque for $17,415.94 cheque was delivered to the UK Charity.

121. In my email of June 25, 2018, to the trust safety department, I stated the following:

> Also, when I finally get the trust accounting done for this file I will have to report myself again because while I was being pressured to get the distributions out to the charities right away by [Charity], I was working without any computer access at all: no current trust account balance, no trust fund ledgers, PC Law, etc. and trying to do it all by hand in the midst of the chaos. I paid 8 of the charities in December, and the ninth -who had always supported me and sympathized with the grief I was getting from [Charity], agreed that when I got all my information it would take what was left, and if there were problems we would work it out. Well, there are definitely problems - in fact I'm still trying to figure it all out. It was this ninth cheque that I sent to London last week. If the rezoning goes through and the second payment is made, all of my mistakes can be adjusted among the charities then by whomever they select to replace me. But if the second payment never becomes due, things will be in a real mess and it will all be my fault. I feel so horrible and embarrassed and furious at myself, as I have always before been meticulous with trust funds and take them very, very seriously.

122. In my email dated December 20, 2018, to LSA investigators, I stated the following:

> You are correct that my initial accounting showed that each of the seven charities with a 1/7 of 50% interest in the remainder of the [MJ] Estate, being the land, were to get $36,693.84. This accounting was being done by hand in the midst of packing and having from December 1 through 8 to make an offer and find a new house that could be moved into on the 8th, after the original offer we had made and had been accepted had fallen through at the last minute. I was under enormous pressure, my computer was unhooked for a three week period, the earlier 8 years of the [MJ] file were packed and I simply made mistakes in the accounting regarding outstanding disbursements. Again I totally understand that the foregoing are reasons but NOT excuses. **As I was writing the cheques and sending them out, it became obvious that the amounts were too high.** [BJ] has consistently supported me in my work for the charities and had even gone to bat with [JP] on occasion, so I advised him of the problem and he agreed that [UK Charity] would take the balance I had left in trust on the understanding that if the second tranche of the purchase price for the land ever comes through the amounts can be adjusted then; otherwise I understand I will be personally responsible for the shortfall. The amount [UK Charity] received was $17,415.94.
>
> [Emphasis added]

Admission

123. I admit that I failed to disburse the sale proceeds to my clients in a timely and accurate manner, particulars of which include:

a. Regarding the delay in payments,

i. I delayed payment to eight of the Beneficiaries by six weeks, between October 26, 2017 and December 4, 2017;

ii. I delayed payment to the UK Charity by eight months, between October 26, 2017 and June 21, 2018;

all of which is contrary to Rule 3.2-1 of the *Code*; and

iii. I failed to disclose to the Beneficiaries that I had been suspended from the practice of law for almost one month between March 15, 2018 and April 10, 2018, which contributed to the delay and which is contrary to my duty of candour contrary to Rule 3.2-3 of the *Code*.

b. Regarding the accounting mistake,

i. My payment to the UK Charity was short by $19,277.29 as compared to the payments to the Beneficiaries with identical percentage interests;

ii. I failed to identify the specific mistake in my accounting which allowed the shortage to occur; and

iii. In December 2017, when I was preparing the cheques for the other eight Beneficiaries, I realized that the amounts were to high but sent them anyway, meaning that the other eight Beneficiaries have been overpaid;

all of which is contrary to Rule 3.5-5 of the *Code* and section 119.24(1) of the *Rules*; and

iv. I have not alerted the other Beneficiaries about the overpayment, which is contrary to my duty of candour pursuant to Rule 3.2-3 of the *Code*;

124. Regarding the loss of financial data, I failed to maintain an electronic back up of my accounting records in a safe and secure location, contrary to Rule 119.36(5)(a) of the *Rules*.

COMPLAINT #2: LSA (CO20181502)

Procedural Background

125. On January 23, 2019, the Trust Safety Department of the LSA referred my failure to comply with the Accounting Rules to the Conduct Department.

126. The Conduct Department conducted a review of the allegations, which resulted in a referral to the Conduct Committee.

127. On July 16, 2019, the Conduct Committee directed that the following citation be dealt with by a Hearing Committee:

> 9. It is alleged Marcia L. Johnston failed to comply with Trust Safety requirements and that such conduct is deserving of sanction.

Statement of Facts

128. On February 27, 2014, I was approved as the Responsible Lawyer for my law practice.

129. By May 3, 2018, I had not submitted any of the prescribed accounting records for the years 2014, 2015, 2016, and 2017, including:

a. the Law Firm Self Report, which is to be submitted annually under to Rule 119.30(3); and

b. the Electronic Data Upload, which is to be submitted annually under Rule 119.30(5).

130. On May 3, 2018, the Manager of the Trust Safety Department wrote to me advising me that my status as a Responsible Lawyer was being revoked for non-compliance with the accounting rules and imposed the following deadlines:

a. To close my trust accounts by May 30, 2018, with proof of closure by June 15, 2018;

b. To submit my final accounting records by May 15, 2018; and

c. To apply for an exemption to operate without a trust account by June 15, 2018.

131. In May and June of 2018, I worked with staff in the Trust Safety department.

132. On June 5, 2018, I provided my 2017 Law Firm Self Report, and on June 7, 2018, I provided my 2017 Electronic Data Upload, both of which had been due on March 31, 2018.

133. On June 20, 2018, I wrote the following email to the Trust Safety Department advising that I intended to retire from practice:

> At age 70 and in my 45th year of practice, I am ready to retire as an active member of the Law Society of Alberta. I am currently working on closing my solicitor trust accounts and finishing my active files for clients. I would hope to have this completed by July 15th, but it may take until July 31st to be completely finished.
>
> I know that I must have a letter from the banks that my trust accounts are closed, my trust accounting disclosure completed and letters to my clients. Can you please advise me whatever steps I need to take? I am having difficulties accessing voicemail, so email is the best way to contact me.

134. I was then provided with information about the steps to take to wind down my practice.

135. On June 29, 2018, my application to become an inactive lawyer was denied because I still had outstanding trust safety requirements.

136. Shortly thereafter, on July 14, 2018, I changed my mind and decided to delay retirement until later in 2018. I did not, however, complete the requirements set out in the letter of May 3, 2018.

137. On November 20, 2018, the Trust Safety department sent the following email reminding me about the letter of May 3, 2018:

> I understand you are still practicing and have plans to continue into 2019.
>
> This is a reminder that in May, 2018, Trust Safety sent you a letter advising you that you may remain as a Responsible Lawyer, but that your approval to operate and maintain a trust account has been revoked. It was my understanding that you were in the process of closing your trust accounts at the end of 2017 and that you would be retiring. Since you have now changed your plans to retire, I am writing to remind you that you no longer have approval to operate a trust account. Please continue your efforts to close all accounts, either by returning the funds to your clients or by arranging for another lawyer to take the funds into his or her pooled trust account.
>
> Please have this process completed, and provide proof of closure of all trust accounts no later than December 31, 2018. After that is submitted, you are required to file an application for exemption to operate a trust account, found on our Website.
>
> Your year end reports will include a Self Report and either an Accounting Upload (using PC Law) or an Accountant's Report if you continue to have problems with PC Law.
>
> Please call me if you have any questions. I've attached the May 3, 2018 letter for your convenience.

138. I responded the following day stating I had forgotten about the letter and asking if "*there are any requirements I could meet that would allow you [sic] to again hold a trust account*?"

139. On November 22, 2018, the Trust Safety representative responded as follows in part:

> …
> Last year, you advised us that you would be retiring after closing your trust accounts. We gave you some leeway as we awaited this, expecting to receive your final reports. Since you did not retire and did not submit your year end accounting upload, we are in the same position as we were in May 2018, when we sent you the letter advising you to close your trust accounts. We have not seen any reconciliations or accounting uploads since you were granted approval in 2014.
>
> This is not acceptable and we maintain our instructions to you to close your trust accounts by returning the funds to your clients or moving the funds to the account of an alternate lawyer approved by the Law Society. Your year end reports for 2018 must also be submitted along with proof of closure of your trust accounts.

140. I replied one week later, on November 29, 2018, as follows:

> I know and wholeheartedly respect your mandate to ensure the safety of trust funds, and I am deeply sorry and embarrassed that my recent actions have not met your standards. I will of course close my trust account by the end of the year.
>
> With respect to filing my 2018 year end trust reports, I would appreciate some clarification, as I am confused by some of the things you say below. I do appreciate the leeway you gave me with respect to my problems with the PCLaw software, so please believe that my questions are genuine and not disagreement with you. I don't understand your statement that you have not seen any reconciliations or accounting uploads since I was granted approval in 2014. I have had the same trust account with […] since 1985 and never had any problems or complaints until the requirement for using accounting software was brought in, and even then I was okay at first until I lost my accountant who knew the software in 2014. And using the leeway you granted me to scan my reconciliations and bank statements to you, I thought that what I had filed with you covered 2014 through 2017. I simply don't know how to upload data directly to you and so far have not found anyone who can help me with it.
>
> I had hoped very much to be able to retire this year, but as I mentioned previously the various alternatives I have tried to find a different source of income have so far not materialized. But I understand that if I do not retire immediately I will have to use another firm's trust account. Thank you for your patience and assistance, and I look forward to understanding the deficiencies in what I have filed with you to date.

141. On December 4, 2018, the Trust Safety Representative responded as follows:

> The letter asking you to close your trust account was a result of our not receiving a Self Report, or Trust Safety Accounting Upload since the year end of 2014. You filed for 2011. Our records show you were employed at [C] LLP from Oct. 2011 to Feb. 2014, and filing was not required. Beginning Feb. 2014 you were approved as Responsible Lawyer of your own firm. Starting with Feb. 14, you were responsible to file an annual Self Report and Accounting Upload. As of May 2017, we had not received any accounting information from you. We had no insight into your Trust Accounts. The Manager of Trust Safety made the decision to close your trust account.
>
> Pursuant to Rule 119.36 the Responsible Lawyer shall maintain prescribed financial records and complete monthly reconciliations. If that is the case, the annual accounting upload is a simple procedure. Once, we heard you were planning to retire, we offered to accept monthly reconciliations as you closed your trust account, in lieu of the accounting upload considering your problems with PCLaw. The only reconciliations I received, in May 2018, were bank statements

> and bank reconciliation documents for June to August 2016. The submittal is missing the bank journal and the client trust listing. The Trust Accounting bank reconciliation requires a 3-way balance: Bank reconciliation should equal the bank journal which should equal the client trust listing. So this was incomplete information and only a small portion of the outstanding months reporting.
>
> I did not follow up on the missing reconciliations because in June, 2018, we received your Self Report and TS Accounting Upload for 2017 year end. However, we feel the circumstances that prompted the instruction from management to close your Trust Account, remain the same.

142. I did not close my trust accounts by December 31, 2018.

143. On March 5, 2019, the Trust Safety representative emailed me as follows:

> I am glad to hear you have been able to disburse all funds from your trust account. We are still waiting to receive confirmation in the form of a note from the bank, that your account has been closed. In addition, I'd like to remind you that your accounting upload is due at the end of this month.
>
> I understand that your problems with PC Law persist. Because of that, I suggest that in lieu of your accounting upload, you provide the bank reconciliations for October, November and December, 2018. Once we receive that information, and the Proof of Closure from the bank, Trust Safety will consider that your obligations to us have been met. A bank reconciliation consists of:
> …
> The deadline for submittal of these documents remains March 31, 2019 with possible late filing penalties if applicable.
> …

144. On March 31, 2019, I provided the bank reconciliation to the Trust Safety department.

145. On April 10, 2019, I submitted proof of closure of my trust accounts.

146. I never applied for the exemption to practice without a trust account as required in the letter of May 3, 2018, and in the email of November 20, 2018.

147. On July 4, 2019, I became an inactive member.

Admissions

148. I admit that I failed to comply with the following Trust Safety requirements:

    a. Regarding the Law Firm Self Reports,

        i. I failed to submit a Law Firm Self Report for the years 2014, 2015, and 2016; and

        ii. I submitted the 2017 Law Firm Self Report on June 5, 2018, which was 66 days late;

        all of which is contrary to *Rule* 119.30(3) of the *Rules*.

    b. Regarding my failure to submit the Electronic Data Uploads,

i. I failed to submit the Electronic Data Uploads for the years 2014, 2015, and 2016; and

ii. I submitted my 2017 Electronic Data Upload on June 7, 2018, which was 68 days late;

which is contrary to Rule 119.30(5) of the *Rules*.

c. Regarding the closure of my trust accounts,

i. On May 3, 2018, I was directed to close my trust accounts by May 30, 2018;

ii. Upon learning that I intended to retire, the Law Society provided some leeway in this deadline;

iii. On July 14, 2018, I decided not to retire, but failed to take steps to close my trust accounts;

iv. On November 20, 2018, I was reminded of my obligation to close my trust accounts;

v. On November 29, 2018, I agreed to close my trust account by December 31, 2018, which I did not do; and

vi. On April 10, 2019, I provided proof of closure of my trust accounts, eleven months after the initial letter, nine months after my decision not to retire, and four months after I agreed to close them in November 2018,

which is contrary to Rule 119.7(5) of the *Rules*.

d. Regarding the submission of my final accounting documents,

i. On May 3, 2018, I was directed to provide my final accounting by May 15, 2018;

ii. Upon learning that I intended to retire, the Law Society provided some leeway in this deadline;

iii. On July 14, 2018, I decided not to retire, but failed to take steps to provide my final accounting documents;

iv. On December 4, 2018, the Law Society clarified what documents were expected of me; and

v. On March 31, 2019, I provided the required documents, eleven months after the initial letter, eight months after my decision not to retire, and four after the clarification in November 2018,

which is contrary to Rule 119.7(5) of the *Rules*.

e. I never filed an application for an exemption to operate a trust account as directed on May 3, 2018, despite the reminder on November 20, 2018, which is contrary to Rule 119.16(1).

OTHER FACTORS

Lawyer's Discipline History

149. Since being called to the Bar in 1985, I have had a total of six complaints against me, including the two that form the basis of this application, none of which resulted in a finding of conduct deserving of sanction.

Practice Management

150. I was referred to mandatory Practice Review in March 2019 as a result of these complaints. My file was closed on February 12, 2020.