

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

AND

**IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
REGARDING NORMAN CLAIR
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee

Deanna Steblyk, QC – Chair (Bencher)
Barbara McKinley – Committee Member (Lay Bencher)
Ken Warren, QC – Committee Member (Bencher)

Appearances

Erica Pridham – Counsel for the Law Society of Alberta (LSA)
Mona Duckett, QC – Counsel for Norman Clair

Hearing Date

July 27, 2020

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. Norman Clair applied to resign from the LSA pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (*Act*). Because Mr. Clair had outstanding conduct complaints against him, this Resignation Committee (Committee) was constituted to hear his application.
2. Mr. Clair became a member of the LSA in November 1978. He has a background as a Crown prosecutor but was most recently in private practice as a sole practitioner in Ponoka, Alberta. His files involved both criminal law and family law, with an emphasis on family law in later years.
3. As of the date of this hearing, Mr. Clair had just turned 75 years old and had been an inactive/non-practising member of the LSA since May 24, 2018. He consented to having a custodian appointed to wind up his practice at that time, and J.S. was appointed custodian on May 28, 2018.

4. Mr. Clair's current status with the LSA is retired. He has no prior record of discipline.
5. Although no citations were yet issued, at the time of this hearing, Mr. Clair faced six open formal complaints, all of which were lodged with the LSA between February 1, 2018 and May 14, 2018.
6. Generally, the client complaints alleged that Mr. Clair failed to respond to communications, failed to provide adequate or competent representation, overbilled, failed to provide statements of account, failed to supervise his legal assistant, failed to return file materials, and failed to return funds held in trust.
7. In addition, a former receptionist complained that Mr. Clair terminated her without notice or severance pay in lieu of notice, and did not provide her with her last paycheque, record of employment, or T4 slip.
8. Mr. Clair was also alleged to have failed to respond to the LSA on numerous occasions.
9. After reviewing all of the evidence and exhibits, and after hearing the arguments of counsel for the LSA and counsel for Mr. Clair, the Committee allowed the application pursuant to section 32 of the *Act*, effective immediately. We advised that a written decision would follow. This is that written decision.
10. In addition, the Committee accepted the Estimated Statement of Costs tendered by the LSA in the amount of \$95,984.81. We ordered that the costs would be payable by Mr. Clair in the event he applies for reinstatement in the future or seeks to be relieved of his undertakings (discussed further below).

Preliminary Matters

11. There were no objections to the constitution of the Committee or its jurisdiction.
12. As there were no requests for a private hearing despite proper notice having been given to the interested parties, a public hearing into Mr. Clair's resignation application proceeded by videoconference.
13. No other preliminary matters were raised.

Agreed Statement of Facts

14. On June 8, 2020, Mr. Clair executed a Statement of Facts and Admissions of Guilt (Statement).
15. In addition to setting out a summary of the six open formal complaints described generally above, in the Statement, Mr. Clair acknowledged improper use of his trust account by his

legal assistant, incomplete trust accounting, and improper use of trust funds. He also acknowledged that as of the date J.S. was appointed custodian of his practice, he had outstanding debts to various service providers and to the Canada Revenue Agency totaling over \$21,000.

16. Mr. Clair admitted that he was guilty of the following conduct, all of which he admitted was conduct deserving of sanction:
 - a. failing to provide legal services to the standard of a competent lawyer, including by failing to perform all functions competently, conscientiously, diligently, and in a timely manner;
 - b. failing to promptly meet the financial obligations related to his law practice;
 - c. failing to supervise his legal assistant;
 - d. failing to properly attend to and manage his law practice;
 - e. abdicating his responsibilities as the Responsible Lawyer for his firm, including by failing to implement the financial record-keeping and mandatory procedural controls prescribed by the Rules of the LSA;
 - f. delegating all accounting and file management tasks to his legal assistant while failing to supervise her;
 - g. allowing the misappropriation of trust funds and improper use of his trust account by his legal assistant; and
 - h. failing to respond promptly and completely to the LSA.

Undertakings

17. On June 8, 2020, Mr. Clair also executed a document entitled, Undertakings and Agreements (Undertakings). Pursuant to the Undertakings, Mr. Clair undertook and agreed to several terms and conditions of resignation. In summary, he agreed to:
 - a. cooperate with the LSA with respect to any future insurance claims;
 - b. pay any deductible with respect to any claim paid by the LSA's insurer, and pay the LSA any claim paid from the Assurance Fund or the indemnity program fund;
 - c. endeavour to locate and surrender to the LSA the Certificate of Enrolment he was issued by the LSA;

- d. refrain from engaging in the practice of law and providing any service usually provided by a paralegal, articling student, law clerk, legal assistant, research assistant, or legal secretary; and
- e. refrain from applying for readmission to the LSA without first paying the sum set out in the Estimated Statement of Costs approved by this Committee.

The Submissions of the Parties

Mr. Clair

- 18. Counsel for Mr. Clair reviewed the general nature of the outstanding complaints against him and observed that while many of the issues arose due to the conduct of his legal assistant, Mr. Clair acknowledged that he had failed to supervise her. Counsel also pointed out that although Mr. Clair was initially self-represented in this matter, he made admissions and negotiated the Statement directly with counsel for the LSA.
- 19. Counsel referred the Committee to the recent decision of another LSA resignation committee in the matter of *LSA v. Wood*, 2019 ABLIS 28. She directed our attention to the various factors considered by that committee in deciding whether to grant the application. This included the fact that there was a joint submission by the parties, who were represented by experienced counsel.
- 20. Counsel for Mr. Clair emphasized that Mr. Clair was 75 years old, retired as of May of 2018 after 40 years of service as a lawyer, and had no prior record of discipline. Given these facts as well as Mr. Clair's admissions of misconduct, she submitted that his application under section 32 of the *Act* was appropriate and should be granted.

LSA

- 21. Counsel for the LSA explained that Mr. Clair elected inactive status and retired in 2018 rather than face an interim suspension application. At the same time, he consented to the appointment of J.S. as custodian, and counsel advised us that J.S. has since wound up Mr. Clair's practice and been discharged as custodian. While Mr. Clair had six open complaints against him, LSA counsel indicated that he brought this application in order to avoid a lengthy hearing, and to bring the complaints to a conclusion without inconveniencing witnesses and panel members.
- 22. Counsel further advised the Committee that the LSA supported Mr. Clair's application. Accordingly, she submitted that the application was tantamount to a joint submission on sanction that should be given considerable deference by the Committee, unless we were to find it demonstrably unfit or unreasonable, or contrary to the public interest.

23. Counsel referred us to paragraph 20 of the LSA's Resignation Guideline, dated December 2016. That paragraph indicates that in considering a resignation application, a committee may consider:
 - a. the nature of the alleged misconduct and whether it would likely result in disbarment if the matter were to proceed to a hearing and the citations were proved, and
 - b. whether there are disputed facts or other factors that would be taken into account by a Hearing Committee, mitigate against disbarment, and make disbarment an unlikely outcome if the matter were to proceed to a hearing.
24. Counsel submitted that in this case, the complaints would likely have resulted in a long suspension if they were proved at a hearing, but not disbarment. Accordingly, an application under section 61 would not be appropriate.
25. Counsel also pointed to the following in support of the application:
 - a. Mr. Clair's stated intention not to return to legal practice;
 - b. that the complaints against Mr. Clair indicated a lack of attention to his practice, not a lack of integrity;
 - c. Mr. Clair's cooperation with the LSA in reaching this result, making the necessary admissions, and giving the required undertakings;
 - d. Mr. Clair's decision to become inactive, consent to the appointment of a custodian, and resign instead of taking the complaints to a lengthy hearing; and
 - e. Mr. Clair's long service to the profession with no history of discipline.
26. As a comparable case, LSA counsel referred us to the very recent decision in *LSA v. Johnston*, 2020 ABLs 18. She submitted that the complaints against the lawyer in that matter were similar to those outstanding against Mr. Clair, and that the lawyer was in a similar situation as Mr. Clair nearing the end of her legal career. That lawyer's application for resignation under section 32 was granted.
27. In terms of the other factors normally considered in sanctioning a member of the LSA for misconduct, counsel argued that specific deterrence and rehabilitation were not necessary here given Mr. Clair's retirement and stated intention not to practice, and that general deterrence and denunciation of the misconduct would be accomplished by his resignation in the face of open complaints against him.

28. Finally, LSA counsel submitted that allowing this application was in the public interest, and the best interest of the members of the LSA. In her view, allowing the application would not negatively affect the public's confidence in the legal profession, but would instead provide assurance that appropriate steps had been taken to protect the public.

Analysis

29. The issue to be determined by this Committee was whether it was in the best interests of the public to permit Mr. Clair to resign pursuant to section 32 in the face of serious unresolved conduct matters.
30. Under the *Act*, a member of the LSA 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.
31. Resignation committees of the LSA have permitted members who faced serious conduct proceedings to resign pursuant to section 32 where the public interest may still be served without requiring either a public hearing into outstanding citations or a deemed disbarment. In those cases, resignation committees were satisfied that the member's conduct had been investigated and that certain mitigating factors existed that offered understanding or an explanation for the member's conduct. In addition, the applications for resignation were supported by the member's undertaking not to re-apply for admission to the LSA.
32. On this application, the Committee was troubled by the fact that no explanation for Mr. Clair's misconduct – following an unblemished 40-year record of service – was offered. For example, in the *Wood* decision cited by Mr. Clair's counsel, there was evidence that the member suffered from medical issues and was under ongoing care. In the *Johnston* decision cited by LSA counsel, the member apparently alluded to "substantial personal issues" at the time of the conduct that gave rise to the complaints against her.
33. Given the absence of an explanation and the seriousness of the misconduct here – including issues with the handling of trust funds and trust accounting – the Committee may have decided this application differently had it not been unequivocally supported by the LSA. Ultimately, the Committee was swayed by the LSA's support and agreed that it was tantamount to a joint submission deserving of deference unless demonstrably unfit or unreasonable, or contrary to the public interest.
34. In addition, the Committee agreed with counsel that while the conduct at issue is serious and, if proven, would be conduct deserving of sanction, it would not likely have resulted in disbarment. In reaching that conclusion, the Committee was mindful of the mitigating effects of Mr. Clair's long legal career and lack of a prior disciplinary record, as well as

his acknowledgement of his misconduct by way of the admissions he made in the Statement.

35. The Committee was also concerned that the Estimated Statement of Costs includes over \$66,000 in custodianship costs, which will have to be absorbed by the rest of the LSA's membership if the costs are never paid by Mr. Clair. However, the Committee was ultimately satisfied that this approach is appropriate given Mr. Clair's current financial situation, which they understand includes recent bankruptcy proceedings. The Committee also noted the considerable costs savings realized by not proceeding to a full hearing.
36. In the result, the Committee was satisfied that granting Mr. Clair's application to resign pursuant to section 32 of the *Act* was in the public interest.

Decision

37. The Committee found that the Statement was in an acceptable form.
38. Based on the evidence established by the Statement, the Committee determined that it was in the public interest to grant Mr. Clair's application to resign pursuant to section 32, effective July 27, 2020.
39. The Committee accepted Mr. Clair's undertakings as set out in the Undertakings.
40. The Committee reviewed and accepted the Estimated Statement of Costs as prepared by the LSA. We ordered that Mr. Clair must pay these costs prior to any future application he may make for reinstatement or for relief from his undertakings.
41. Pursuant to subsection 32(2) of the *Act*, Mr. Clair's name will be struck off the roll. The roll shall reflect that Mr. Clair's application under section 32 of the *Act* was allowed on July 27, 2020.

Concluding Matters

42. 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. Clair will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).
43. On July 27, 2020, the Committee directed that a Notice to the Profession be issued. That notice was issued by the LSA on July 29, 2020.

44. A Notice to the Attorney General is not required, as the evidence before us discloses no reasonable or probable grounds to believe that a criminal offence has been committed.

Dated at Calgary, Alberta, August 26, 2020

Deanna Steblyk, QC - Chair

Barbara McKinley

Ken Warren, QC

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY

NORMAN H. CLAIR

A MEMBER OF THE LAW SOCIETY OF ALBERTA

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 November 10, 1978.
2. I was a Crown Prosecutor in Alberta from 1978 to 1985. I worked in both government and private practice in Nova Scotia and New Brunswick from 1986 to 2006, then I returned to Alberta in 2007. Initially I worked as a Crown Prosecutor, then I left the Crown to work for several small firms before setting up a sole practice in [P], Alberta under the name Case Closed Law Office in June of 2014 ("Case Closed").
3. On May 24, 2018, I became an inactive/non-practising member of the LSA, having consented to appoint a custodian to wind up my practice. My current status is retired.
4. On May 28, 2018, J.S. was appointed as custodian of my practice.
5. I had one legal assistant at Case Closed, L.P., who I met when I worked another firm from December 2008 until July 2013. I also employed a part-time receptionist.
6. Initially, Case Closed had a mix of criminal and family law clients from Legal Aid Alberta. However, towards the end of my practice most of my clients were family law files. These files required me to travel to various Courthouses in Edmonton, Red Deer, Rocky Mountain House and other more rural locations. As a result, I was out of the office during regular working hours and relied upon my assistant to keep me abreast of client needs and questions.

APPLICATION FOR RESIGNATION

7. I am applying to resign as a member of the LSA pursuant to section 32 of the *Legal Profession Act* (the “Act”).
8. My application arises out of six open formal complaints. No citations have been issued.

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

ADMITTED Facts

CO20180247 – S.M.

Facts

9. On February 1, 2018, the LSA received a complaint from S.M., a former client of mine. S.M. alleged that I failed to respond to him, failed to adequately represent him, was not in my office during regular business hours, failed to provide him with a statement of account and failed to return his file materials and the remainder of his retainer held in trust.
10. I understand that S.M. alleges as follows:
 - a. S.M. contacted me on September 14, 19, 20, and 22, 2017. I did not respond;
 - b. On September 27, 2017, S.M. attended at my office during regular office hours. The door was locked, and the blinds were shut;
 - c. S.M. left messages for me on October 4, 9, 11, and 19, 2017. I did not respond;
 - d. S.M. attended at my office on October 23, 2017 and the office was closed;
 - e. On October 31, 2017, S.M. attended at my office and discovered the “aid” locking the door. The aid stated that they were working on his file.
 - f. S.M. continued to call my office and leave messages with no response (November 2, 8, 15, 2017);
 - g. On November 23, 2017, I returned S.M.’s call advising we were going to Court;
 - h. At Court, S.M. claims that I did not explain what the next steps were;
 - i. I continued to be unresponsive until a meeting on January 29, 2018 when S.M. requested I return his file;
 - j. S.M. never received a Statement of Account; and
 - k. S.M. attended at my office in January 2018 requesting his remaining funds held in trust. S.M. states that I did not recognize him.

11. On March 6, 2018 the LSA sent me the complaint and requested my response within 14 days. I did not respond. On April 5, 2018, the LSA emailed me a reminder letter requesting my response to the complaint and advising that a failure to respond may result in a citation of failing to respond. I responded on April 18, 2018.
12. LSA Forensic Investigator, B.O., requested that I issue a statement of account and return S.M.'s file materials and remaining retainer funds. I instructed my assistant, L.P., to issue a statement of account and to prepare S.M.'s file materials for pick-up.

CO20180358 – H.H.

Facts

13. On February 13, 2018, the LSA received a complaint from H.H., my former receptionist at Case Closed. H.H. complained that I had terminated her without notice and had not provided her with her last paycheque, severance pay, record of employment or T4.
14. H.H. worked for Case Closed from October 2016 to January 20, 2018. H.H. informed the LSA that I was rarely in the office, typically only attending one or two days per week for thirty minutes to an hour.
15. H.H. informed me that she was facing significant financial issues as a result of my delay in providing her with her pay, her record of employment and her T4. She was not able to apply for employment insurance without her record of employment or complete her taxes on time without her T4. Further, she advised that the Canada Revenue Agency ("CRA") had informed her that they had not received any tax information or source deductions for her employment from Case Closed.
16. On March 6, 2018 the LSA sent me the complaint and requested my response within 14 days. I did not respond. On April 5, 2018, the LSA emailed me a reminder letter requesting my response to the complaint by no later than April 19, 2018, advising that a failure to respond may result in a citation of failing to respond. I did not respond by April 19, 2018.
17. On May 17, 2018, I responded to the LSA, advising that H.H. had been terminated due to falling income and that we had discovered she had been padding her timesheets. I felt she was trying to charge us for more than she was owed. I informed the LSA that I had settled the issue of wages with H.H. from my own personal resources.

CO20180367 – D.K.

Facts

18. On February 15, 2018, the LSA received a complaint from D.K, a former client of mine. D.K. complained that I had provided "very sloppy" legal services. I understand that D.K. submitted additional materials alleging as follows:
 - a. That I was rude to his fiancé;
 - b. That I was uncommunicative;

- c. When I met with him to swear an affidavit for an upcoming Court appearance, it had the wrong names and numerous other errors;
 - d. That I was unprepared for Court;
 - e. That I overbilled him and failed to provide him an itemized Statement of Account;
 - f. That I informed D.K. that I would no longer be representing him, but I did not file a Notice of Withdrawal of Lawyer of Record; and
 - g. That when he picked up his file materials, another client's materials were intermingled, including land transfer documents for a property located in [D].
19. On April 5, 2018 the LSA sent me the complaint and requested my response within 14 days. I did not respond. On April 30, 2018, the LSA emailed me a reminder letter requesting my response to the complaint by no later than May 15, 2018, advising that a failure to respond may result in a citation of failing to respond. On July 12, 2018 and August 15, 2018, the LSA sent further reminder letters providing a deadline of September 15, 2018. I did not respond by September 15, 2018.
20. On November 21, 2018 I responded to the complaint advising as follows:
- a. D.K.'s chronology appeared correct;
 - b. I could not speak to the errors in the affidavit as I had not drafted the affidavit. I did not submit the affidavit until he had reviewed it;
 - c. D.K.'s girlfriend was inconsistent and argumentative, and I wanted to hear directly from D.K.; and
 - d. I could not respond to the complaint about the invoices as I had no memory of that.

CO20180820 – K.S.

Facts

21. On April 11, 2018, the LSA received a complaint from K.S., a former client of mine. K.S. complained that she had retained me in November of 2016, but her file was not progressing. K.S. alleged that her requests for an update on her file or a meeting with me were ignored or that my legal assistant, L.P., would tell her that she did not need to talk to me.
22. K.S. provided evidence of numerous attempts to contact me with little or no response.
23. On April 26, 2018 the LSA sent me the complaint and requested my response within 14 days. On May 3, 2018, May 4, 2018, May 7, 2018 and May 10, 2018 the LSA responded to my inquiries and reminded me to respond to the outstanding complaints. On July 12, 2018, the LSA sent me a reminder letter requesting my response as soon as possible. On August 15, 2018, the LSA sent me a reminder letter requesting a response to K.S.'s complaint by no later than September 15, 2018 and advising that a failure to respond may result in a citation of failing to respond.

24. I responded on November 21, 2018. In my response I state that I was not regularly in the office because of the nature of my practice which required me to travel to Court appearances all over central Alberta. I relied heavily on my legal assistant, L.P., to take calls and messages. If K.S.'s allegations of her attempts to contact my office are true, I was not made aware of said attempts.

CO20180922 – J.G.

Facts

25. On April 22, 2018 the LSA received a complaint from J.G., a former client of mine. J.G. complained that she was having difficulties contacting me, that her file was not progressing in a timely manner, and that she was concerned that I was not supervising my legal assistant, L.P.
26. J.G. had retained me in April of 2017 to probate her late husband's will and to complete three transfers of land. I understand that J.G. alleges as follows:
- a. That I failed to update her or respond to her in a timely manner;
 - b. That nobody answered Case Closed's telephone and that the voicemail box was often full;
 - c. In April of 2018, J.G. called my office and discovered that my telephone had been disconnected. She attended at my office and the lights were off;
 - d. That she mainly dealt with my legal assistant, L.P.;
 - e. That I failed to keep her updated on her matter;
 - f. That my legal assistant, L.P, informed her that the delay was caused by the Court clerks who had misplaced the probate documents, but she believes that was a lie;
 - g. That my legal assistant, L.P., informed her that the land transfer documents had been lost by the courier, but that was not true. The Land Titles Office had received the documents, but they were not filed because my account had been terminated for non-payment of an outstanding invoice;
 - h. That the trust cheques to the beneficiaries were for the wrong amounts;
 - i. That I failed to show up for a scheduled meeting with her;
 - j. When she met with me to collect the cheques for paying out the estate, I could not answer any of her questions or explain why they were for the wrong amounts;
 - k. That I paid my fees from the funds held in trust without providing her with a Statement of Account for my legal services;
 - l. That she was only billed once for disbursements on June 19, 2017 and that I never provided her with a Statement of Account for my legal fees or a Statement of Adjustments regarding the estate; and

- m. That I billed her in excess of the agreed upon amount.
27. On May 3, 2018 the LSA sent me the complaint and requested my response within 14 days. On May 3, 2018, May 4, 2018, May 7, 2018 and May 10, 2018 the LSA responded to my inquiries and reminded me to respond to the outstanding complaints. On July 12, 2018, the LSA sent me a reminder letter requesting my response as soon as possible. On August 15, 2018, the LSA sent me a reminder letter requesting a response to J.G.'s complaint by no later than September 15, 2018 and advising that a failure to respond may result in a citation of failing to respond.
 28. On December 10, 2018 I responded to the complaint. I advised that it appeared J.G.'s main complaint was that Case Closed was holding \$33,000 in trust and that she tried to contact the law office without success for the purpose of getting the money back. Later, in a letter, she acknowledged that she attended at the office and obtained most of the money from the trust account, but that she was disputing a Statement of Account for a failure to render services. The file did not say what services were not rendered and therefore I could not respond.

CO20181042 – L.N.

Facts

29. On May 14, 2018, the LSA received a complaint from L.N., a former client. L.N. had retained Case Closed to transfer her acreage pursuant to a purchase and sale agreement. L.N. advised that she never met with me, only my assistant, L.P. and that Case Closed represented both sides of the real estate transaction. The bank was supposed to receive the funds on March 23, 2018, the possession date, but they did not receive the funds until April 2, 2018. As a result, L.N. was charged additional interest (approximately \$400.00/day) on her line of credit.
30. L.N. complained that, despite the money being transferred and physical possession taken, the Land Title for the acreage had not been transferred. L.N. repeatedly checked with the Land Title Office and confirmed that as of May 16, 2018, the land had not been transferred. Despite many attempts, L.N. was not able to get into contact with me or my assistant, L.P.
31. Despite my legal fees being paid, L.N. advised that she did not receive a Statement of Account, reporting letter or Statement of Adjustments.
32. On May 14, 2018 the LSA sent me the complaint and requested my response within 14 days. On July 12, 2018, the LSA sent me a reminder letter requesting my response as soon as possible. On August 15, 2018, the LSA sent me a reminder letter requesting a response to L.N.'s complaint by no later than September 15, 2018 and advising that a failure to respond may result in a citation of failing to respond.
33. On December 10, 2018 I responded as follows:
 - a. The main complaint was that I failed to register documents in compliance with a trust agreement arising from a sale of property;

- b. I saw no notation on the file that I ever met with her personally. I have no recollection of meeting with her. The file indicates she only had contact with my legal assistant, L.P.;
- c. The only document I signed was that the transaction was in compliance with the Western Law Society Conveyance Protocol;
- d. I was aware that we had an outstanding account at the Court of Queen's Bench. I had instructed L.P. to pay the account. I assumed it had been paid; and
- e. There is no indication on the file why the documents were not filed, similar to other files where documents were not filed by L.P.

INVESTIGATION AND PRACTICE REVIEW

Facts

L.P. "Mortgage" File

- 34. My legal assistant, L.P., opened a file in her name described as "Mortgage". On July 31, 2017 and November 6, 2017, funds were received from [C] Insurance into my pooled trust account. I was not aware of this file or the creation of a trust ledger in L.P.'s name.
- 35. From August 2017 to April 2018, the funds were paid to L.P. in numerous installments, generally \$500 to \$3000 each. Instead of being paid directly to L.P., the funds were transferred from my [A] trust account to my [R] trust account and then paid to L.P. by way of electronic transfer.
- 36. I did not authorize any of these transactions. I informed the Law Society Investigator that this was an improper use of my trust accounts.

Trust Safety

- 37. I am the Responsible Lawyer for Case Closed.
- 38. I did not ensure that the monthly reconciliations were prepared every month. As of May 28, 2018, when the custodian was appointed over my practice, I had not reviewed or executed a monthly reconciliation since February of 2018. Additionally, I had not completed a Trust Safety Accounting upload since September 6, 2016.
- 39. In reviewing my trust accounting records, the Law Society Investigator discovered several examples where funds were withdrawn from my client's trust accounts to pay for my legal fees when no Statement of Account had been issued. In some cases the funds were withdrawn for legal services prior to any legal work commencing.

Creditors

- 40. In addition to failing to pay my courier service (\$4,774.25), I had the following outstanding lawful debts as of May 28, 2018: the Alberta Land Title Office (\$2,200), [D] Energy (\$1,294.15), CRA source deductions (\$1,797.04), CRA GST (\$8,132.34), Ponoka [C] (\$2,677.27) and [T] (\$736.55).

41. As a result of my failure to pay the lawful debts of my law practice, the Court of Queen's Bench refused to allow me to file documents, the Alberta Land Title Office refused to allow me to register documents and Case Closed's telephone was disconnected.

Practice Management Assessment

42. I met and communicated with the Practice Management department of the LSA from March of 2016 to early 2017. Practice Management raised a number of issues with me, including the following:
- a. Clients were having difficulty reaching me and felt their matters were being delayed;
 - b. The Practice Management assessors felt that I did not have a good grasp on the status of many of my files;
 - c. I was relying too heavily on my assistant to manage files;
 - d. I was delegating too much responsibility for my family law files to my assistant and at times skating dangerously close to allowing my assistant to practice law;
 - e. I had no knowledge of many aspects of the day-to-day finances of Case Closed, including what my staff were paid; and
 - f. I admitted to the Practice Management Assessors that I have no knowledge of PC Law and do not know how to access the program.

ADMISSIONS OF GUILT

43. I admit as facts the statements contained in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings and section 60 of the *Legal Profession Act* (the "Act").
44. I admit that I failed to provide legal services to the standard of a competent lawyer, including failing to perform all functions competently, conscientiously, diligently and in a timely manner and that such conduct is conduct deserving of sanction.
45. I admit that I failed to promptly meet the financial obligations related to my law practice and that such conduct is conduct deserving of sanction.
46. I admit that I failed to supervise my legal assistant, L.P., and that such conduct is conduct deserving of sanction.
47. I admit that I failed to properly attend to and manage my law practice and that such conduct is conduct deserving of sanction.
48. I admit that I abdicated my responsibilities as the Responsible Lawyer, including failing to implement the financial recordkeeping and mandatory procedural controls prescribed by *The Rules of The Law Society of Alberta* and that such conduct is conduct deserving of sanction.

49. I admit that I delegated all accounting and file management tasks to my legal assistant, L.P., with no supervision by me and that such conduct is conduct deserving of sanction.
50. I admit that I allowed the misappropriation of trust funds and improper use of my trust account by my legal assistant, L.P., and that such conduct is conduct deserving of sanction.
51. I admit that I failed to respond promptly and completely to the LSA and that such conduct is conduct deserving of sanction.
52. I further admit that the conduct described in paragraphs 45 to 52 herein is conduct deserving of sanction as defined in section 49 of the *Act*.

ACKNOWLEDGEMENTS

53. I acknowledge that I have consulted with legal counsel.
54. I acknowledge that I have signed this Statement of Admitted Facts and Admission of Guilt voluntarily and without any compulsion or duress.
55. I acknowledge that I understand the nature and consequences of signing this Statement of Admitted Facts and Admission of Guilt.
56. I acknowledge that, although entitled to deference, a Hearing or Resignation Committee is not bound to accept a joint submission.

**THIS STATEMENT OF ADMITTED FACTS AND ADMISSIONS OF GUILT IS MADE THIS
8 DAY OF June, 2020.**

(Witness)

“Norman Clair”
NORMAN H. CLAIR