

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

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KEVAN B. PETERSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Edward Feehan, KC – Chair and Bencher
Grace Brittain – Adjudicator
Glen Buick – Adjudicator

Appearances

Christine Blair – Counsel for the Law Society of Alberta (LSA)

Non-Appearances

Kevan B. Peterson

Hearing Date

July 5, 2022

Post-Hearing Submissions

August 26, 2022 – Submitted by LSA counsel only

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Introduction

1. This decision involves a determination as to the appropriate sanction for a member who has consistently demonstrated a complete lack of cooperation with the LSA which, as a self-regulating professional body, has an active obligation to foster confidence in the profession and protect the public interest in the delivery of legal services.

2. Is it just, reasonable, proportionate, and appropriate to disbar a member who has demonstrated by his lack of cooperation that he is ungovernable and has no intention of abiding by the authority of the LSA and the *Legal Profession Act, RSA 2000, c. L-8 (Act)*?

3. For the reasons that will follow, it is the decision of this Hearing Committee (Committee) that disbarment is an available sanction for dealing with ungovernable members and is an appropriate sanction in this case.

Citations

4. The following citations against Kevan B. Peterson were directed to a hearing by a Conduct Committee Panel on September 14, 2021:
 1. It is alleged Kevan B. Peterson failed to serve his clients in a competent, diligent, honest, and conscientious manner and that such conduct is deserving of sanction (Citation 1); and
 2. It is alleged Kevan B. Peterson failed to reply to communications from the Law Society of Alberta and that such conduct is deserving of sanction (Citation 2).(collectively, the Citations).
5. The first citation arises out of a complaint (the Complaint) from former clients, MM and DM (collectively MM) dated March 3, 2020. The second citation arises out of Mr. Peterson's lack of response to the Complaint.

Decision Summary

6. For the reasons that will follow, it is the decision of this Committee that the Citations have been proven on a balance of probabilities and that Mr. Peterson's conduct is deserving of sanction.
7. In addition, and for the reasons that follow, it is the decision of this Committee that Mr. Peterson has demonstrated that he is ungovernable by the LSA. Accordingly, Mr. Peterson shall be disbarred.

Previous Conduct and Suspensions

8. To fully appreciate the determination of this Committee that Mr. Peterson was and is ungovernable, it is necessary to detail Mr. Peterson's history with the LSA.
9. Mr. Peterson was admitted as a member of the LSA on February 16, 2001.
10. Just prior to January 2, 2019, Mr. Peterson had practiced employment law and general litigation as a sole practitioner in Edmonton operating as Advantage Law.
11. On January 2, 2019, Mr. Peterson's membership with the LSA was suspended (Initial Suspension) for non-payment of fees (Fees). Unfortunately, the Initial Suspension did not impede Mr. Peterson from continuing to provide legal service while suspended.
12. On June 20, 2019, Mr. Peterson signed a Consent Custodianship Order that granted the LSA custodianship of his practice as Mr. Peterson was unable to handle his clients' files.

13. On January 25, 2021, a different Hearing Committee found Mr. Peterson guilty of conduct deserving of sanction with respect to 21 citations. Generally, the citations fell into one of three broad categories:
 - a) Misconduct in relation to clients: failure to keep clients informed; failure to respond; failure to follow instructions; failure to attend court; failure to be honest; creating a fraudulent document; and failing to advance clients' legal matters;
 - b) Misconduct in relation to practicing law while suspended; and
 - c) Misconduct in failing to respond to the LSA.
14. It is notable, in this Committee's opinion, that Mr. Peterson continued to practice law after the Initial Suspension. It is apparent that Mr. Peterson's Initial Suspension was neither an impactful nor useful sanction as Mr. Peterson demonstrated that he was not prepared to abide by it. The Initial Suspension had no specific deterrent impact on Mr. Peterson, nor did it have any rehabilitative effect whatsoever.
15. Moreover, it is apparent that the Initial Suspension did not protect the public or preserve public confidence in the profession. Mr. Peterson continued to bring the delivery of legal services into disrepute.
16. On January 25, 2021, a Hearing Committee determined that the appropriate sanction was 13 months' suspension (Second Suspension) that was to be effective immediately. Costs of \$12,547.50 were ordered to be paid within one year of the date of the Hearing (Costs).
17. The suspensions are starting to stack up. Technically, the two suspensions have been running concurrently.
18. The prior Hearing Committee also noted that failure to pay the Costs as ordered would result in an automatic suspension as set out in section 79 of the *Act* in addition to the 13-month suspension imposed.
19. Mr. Peterson has never paid the Fees due, nor Costs ordered.
20. Mr. Peterson has been continuously suspended since January 2, 2019 and remains suspended as of the date of this decision.
21. A further suspension will serve no useful purpose.

Application to Admit a Notice to Admit Facts and Exhibits

22. On May 10, 2022, LSA counsel requested that this Committee consider a pre-hearing application by the LSA (Application) for the following relief:

The evidence to be presented to the Committee [consists of] the attached Notice to Admit Facts and Exhibits which was served on Mr. Peterson on February 4, 2022 and March 3, 2022 via email and to which there has been no response, [and that the same] be admitted for the purpose of the Hearing.

23. In support of the Application, LSA counsel submitted written submissions which attached a copy of the Notice to Admit Facts and Exhibits (Notice to Admit) which had been served on Mr. Peterson.

24. In the written submissions, LSA counsel articulated the following relevant points:

- a) As of the date of the Hearing, the LSA had not received a response from Mr. Peterson relating to the correspondence sent during the original complaint, the Hearing, the Notice to Admit, or the emails dated February 4, 2022, and March 3, 2022.
- b) It is the responsibility of the members of the LSA to maintain current contact information pursuant to Rule 42 of the Rules of the LSA (Rules). Notwithstanding this obligation on Mr. Peterson, he has not contacted the LSA to update his address, email or telephone numbers.
- c) The email address on file continues to accept communications.
- d) Rule 43 states that the most recent personal email address furnished by a member is an alternative official address for service.
- e) A party who is served with a Notice to Admit must reply in writing within 21 days of service. If a member fails to respond to a Notice to Admit within the specified timeframe, the party is deemed to admit the truth of the facts or the authenticity of the documents set out in the Notice to Admit, unless otherwise directed by the Hearing Committee in accordance with Rule 90.4(12).
- f) Prior decisions by a Hearing Committee confirm that in circumstances where a member does not participate in the hearing process it is fair and reasonable to rely on a Notice to Admit. In the decision of *Law Society of Alberta v. Wu*, 2020 ABLS 29 that Hearing Committee stated at paragraphs 13 and 16 that:

Paragraph 13 – As a member of the LSA, Mr. Wu had the obligation to provide his current contact particulars. Rule 42 clearly sets out the obligation of every lawyer to ensure that the Executive Director has current contact information. As such, it should not be necessary for the

LSA to be put to extraordinary measures to find Mr. Wu when service is impractical or impossible. The Committee is of the view that Mr. Wu has received the benefit of reasonable process. There are attempts to reach him by email, at his home and by telephone. By not providing current and accurate contact information Mr. Wu deprived himself of actual and timely notice of the LSA's application. This should not be a hindrance to the LSA application proceedings.

Paragraph 16 – The LSA cannot be hobbled when a member simply abdicates responsibility in a regulatory process. It must be permitted to proceed with the Hearing without answer from the member, if necessary. As such, the applications of the LSA were granted on December 6, 2020.

- g) Reference is also made to the decision of *Law Society of Alberta v. Stark*, 2018 ABLS 12 wherein that Hearing Committee observed at paragraph 50 that:

Section 60.01(1) of the *Code of Conduct* is clear that a lawyer must reply “promptly and completely” to any communication from the LSA. While there were replies from Stark, they were not always either prompt or complete. Given these failures, the Committee found Mr. Stark guilty of Citation 15, which was failing to respond promptly and completely to communications from the Law Society.

25. It is noted that Mr. Peterson did not respond to the Notice to Admit, nor did he attend the Application notwithstanding significant efforts to serve him with notice.
26. The written submission proffered by the LSA enumerated various steps in the process whereby the LSA invited Mr. Peterson to participate in the process, including the following:

<u>Date</u>	<u>Event</u>
March 23, 2020	Mr. Peterson was served with the Complaint and requested to respond pursuant to section 53 of the <i>Act</i> and Rule 85. He did not respond.
April 20, 2020	A follow-up letter was sent to M. Peterson. He did not respond.
May 14, 2020	A further letter was sent to M. Peterson. He did not respond.
September 28 and 29, 2021	Formal Citations were served on Mr. Peterson by the Tribunal Office. He did not respond.

October 27, 2021	LSA Counsel served Mr. Peterson with disclosure. He did not respond.
November 23, 2021	The first Pre-Hearing Conference (PHC) was conducted. Mr. Peterson did not attend.
December 21, 2021	The second PHC was conducted. Mr. Peterson did not attend.
February 4, 2022	A Notice to Admit was served on Mr. Peterson via email requesting a response within 21 days. He did not respond.
March 3, 2022	A Notice to Admit was served on Mr. Peterson again via email, advising that an application to proceed in his absence would be made if no response was received to the attached Notice to Admit. He did not respond.
March 22, 2022	The third PHC was conducted. Mr. Peterson did not attend.
April 19, 2022	The Tribunal Office served Mr. Peterson via email with the following documents:

- Letter of Appointment;
- Notice to Attend;
- Pre-Hearing and Hearing Guideline;
- Video-Conference Hearing Guideline;
- Template for Private Hearing Application for Witness or Other Interested Parties.

Mr. Peterson has not responded.

27. On May 27, 2022, this Committee met to consider the LSA's Application for the evidence to be presented at the Hearing to be admitted pursuant to the Notice to Admit. After review of the LSA's Written Submissions, and considered deliberation, this Committee advised LSA counsel that the Committee would consent to admit the Notice to Admit Facts as evidence at the Hearing.

Hearing

28. On July 5, 2022, this Committee convened a hearing into the conduct of Mr. Peterson based on the two Citations.
29. Mr. Peterson did not attend the Hearing, which proceeded in his absence.
30. At no time did Mr. Peterson or any counsel or individual contact the LSA on behalf of, or as an agent of, Mr. Peterson.

31. Further, it is noted that no written communications or submissions were received by or on behalf of Mr. Peterson in relation to the allegations, the PHCs, the Notice to Admit, the Application, his conduct, or the potential sanction.
32. At the outset of the Hearing, this Committee decided the following facts:
 - a) Mr. Peterson had been properly served with a Notice to Attend.
 - b) There were no objections to the constitution of this Committee or its jurisdiction.
 - c) A private hearing was not requested; and
 - d) As of May 25, 2022, the LSA had certified that, *inter alia*, Mr. Peterson was a suspended member of the LSA.

Notice to Admit

33. No oral evidence was presented at the Hearing.
34. In accordance with the decision of this Committee at the pre-Hearing Application, the Notice to Admit which had been served on Mr. Peterson was to admitted into evidence.
35. The highlights of the Notice to Admit Facts and Evidence in relation to the Citations read as follows:

Citation 1

In relation to Citation 1, the following uncontradicted facts are relevant:

- a) In February 2015, the complainants, MM, retained Mr. Peterson to act for them in relation to a claim against the builder who constructed their residence. They provided Mr. Peterson with an initial retainer of \$2,000.00 and later provided him an additional \$2,500.00.
- b) Mr. Peterson advised MM that he had filed a claim on their behalf and that the claim was active. He advised that he continued to work on the claim and was attempting to mediate a settlement.
- c) In early 2019, Mr. Peterson, who was administratively suspended at that time, informed MM that the builder had made a settlement offer of \$25,000.00. The clients refused the offer and, accordingly, Mr. Peterson advised them that he was continuing to work on their matter.

- d) In 2019, Mr. Peterson did not respond to any contact from MM. They retained new counsel, who requested Mr. Peterson provide a copy of the file, but no response was forthcoming from Mr. Peterson.
- e) On June 21, 2019, a custodian took over Mr. Peterson's practice, but was unable to locate a client file for MM.
- f) On March 20, 2020, the LSA received a complaint from MM alleging that Mr. Peterson had taken \$4,500.00 in fees from them and led them to believe that he was working on their claim against the builder of the residence. They allege that Mr. Peterson misled them and did nothing to progress this matter including the filing of a Civil Claim or a Statement of Claim notwithstanding representations that a pleading had been filed and that an action was extant.
- g) A search at Provincial Court on June 7, 2021 confirmed that no Civil Claim had been filed on behalf of MM by Mr. Peterson in relation to the builder.
- h) A search of the Court of King's Bench on June 29, 2021 confirmed that no Statement of Claim had been filed on behalf of MM in relation to the builder.

Citation 2

In relation to Citation 2, the following facts are relevant:

- a) On March 25, 2020, a letter dated March 23, 2020 was sent to Mr. Peterson, via email, attaching the Complaint and related materials. Mr. Peterson was asked to respond to the Complaint within two weeks. LSA received confirmation of delivery of the March 25, 2020 email. No response was received from Mr. Peterson.
- b) A reminder letter was sent to Mr. Peterson on April 20, 2020, via email, requesting a response by May 13, 2020. The letter advised Mr. Peterson of his obligation to respond promptly and completely to communications from the LSA failing which the matter may be referred to a Conduct Committee without the benefit of his response. The LSA received confirmation of delivery of the April 20, 2020 email. No response was received from Mr. Peterson.
- c) On May 14, 2020, a final review letter was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the May 14, 2020 email. No response was received from Mr. Peterson.
- d) On August 18, 2020, an update letter was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the August 18, 2020 email. No response was received from Mr. Peterson.

- e) On November 23, 2020, an update letter was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the November 23, 2020 email. No response was received from Mr. Peterson.
 - f) On February 26, 2021, an update letter was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the February 26, 2021 email. No response was received from Mr. Peterson.
 - g) On May 26, 2021, an update letter was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the May 26, 2021 email. No response was received from Mr. Peterson.
 - h) On August 4, 2021, a letter referring the complaint to the Conduct Committee was sent to Mr. Peterson via email. The LSA received confirmation of delivery of the August 4, 2021 email. No response was received from Mr. Peterson.
36. As noted above, Mr. Peterson did not respond to LSA disclosure; he did not attend any of the three PHCs; he did not respond to the Notice to Admit; he did not attend the May 10, 2022 Application; and he did not attend the July 5, 2022 Hearing.
37. Pursuant to section 68 of the *Act*, this Committee has wide discretion to rely on a Notice to Admit in the appropriate circumstances. In this case, the Committee has no difficulty on relying on the Notice to Admit based upon the following considerations:
- a) Mr. Peterson did not respond to the Notice to Admit and is thereby deemed to admit the truth of the facts and the authenticity of the documents described in the Notice to Admit.
 - b) Mr. Peterson made no attempt to appear at the Application on May 10, 2022 or the Hearing on July 5, 2022. It is obvious that he has no intention of submitting to or participating in the disciplinary process.
 - c) The Notice to Admit is supported by documents that are appended as exhibits. It is not merely a statement of bare facts.
 - d) There is no principle of procedural fairness which would be violated by relying on the Notice to Admit in the present circumstances.
 - e) Relying on the Notice to Admit would allow for significant savings in hearing time and witness inconvenience; and
 - f) Finally, it is Mr. Peterson's lack of compliance with the *Act* and Rules, and lack of response to the LSA, that has deprived him of any opportunity to challenge the

accuracy and authenticity of any fact or exhibit. The LSA made all reasonable efforts to allow Mr. Peterson to engage in the process.

38. It is the decision of this Committee that it would be appropriate, fair, and reasonable for this Committee to admit into evidence and rely upon the Notice to Admit.

Conduct Deserving of Sanction

39. The Committee accepts and relies on the facts and exhibits contained in the Notice to Admit.
40. The Committee also accepts the submissions of LSA, which were substantiated by the Notice to Admit, that:
- a) Mr. Peterson took a retainer of \$4,500.00 from MM without providing adequate or any legal services.
 - b) Mr. Peterson deliberately misled MM that he was working on a claim against the builder of their residence when, in fact, no Provincial Court nor King's Bench action had been filed.
 - c) Mr. Peterson did not commence litigation notwithstanding clear instructions from MM to do so.
 - d) Mr. Peterson was not honest and forthright with his client. He continued to deliberately mislead them to believe that a claim had been filed when no claim had been filed.
 - e) Mr. Peterson did not respond to the complaint; did not participate in the PHCs; did not attend the Application; and did not attend the Hearing notwithstanding that Mr. Peterson was served with notice of all procedures and confirmation of service was confirmed by the LSA.
 - f) Finally, it is noted that Mr. Peterson has made no attempt to notify the LSA of any change to his address, work address, email address, phone number or residence.
41. After reviewing the Notice to Admit and exhibits attached thereto and assessing the written and oral arguments of the LSA, the Committee finds that, pursuant to section 71 of the *Act*, both Citations have been proven on a balance of probabilities and Kevan Peterson is guilty of conduct deserving sanction in relation to both Citations.

Directions on Sanction

42. At the Hearing, the Committee advised counsel for the LSA that it was their unanimous decision that Mr. Peterson was guilty of conduct deserving of sanction. The Panel indicated that a written decision in relation to the Committee's determination that Mr. Peterson is guilty of conduct deserving of sanction would be forthcoming.
43. Accordingly, LSA counsel was invited to make submissions in relation to sanction. LSA counsel recommended a sanction of two months' suspension for the two Citations based on various sentencing principles and a number of precedents.
44. At the conclusion of LSA submissions, the Committee expressed concerns about whether a further suspension would protect the public or allow the public to have any confidence in the profession. The Committee also noted that further suspension would not serve any rehabilitative purpose, specific deterrent or general deterrent purpose, or serve to denounce his conduct. The Panel was concerned about the governability of Mr. Peterson who had amply demonstrated that he has no intention of wanting to remain a member of the LSA.
45. As a result of the Committee's concerns, the Committee made the following direction:
 - a) A transcript of Hearing in relation to sanction was to be prepared (Transcript).
 - b) LSA counsel was to provide a copy of her written submissions on sanction to Mr. Peterson along with a copy of the Transcript.
 - c) Service of the Transcript and written submission of LSA counsel on sanction was deemed to have been effected 7 days after delivery to Mr. Peterson via email.
 - d) Mr. Peterson was to be invited to make written submissions on sanction within 21 days of being served with the materials, failing which the Committee indicated in the Transcript that they would proceed in his absence to consider the possibility of a more severe sanction, including disbarment.
 - e) LSA counsel was given opportunity to file further submissions on sanction within 14 days of receiving materials from Mr. Peterson or 28 days after Mr. Peterson was served with the materials, whichever occurred first.

No Submissions by Kevan Peterson on Sanction

46. A copy of the Transcript and the letter outlining the Committee's direction concerning written submissions on sanctions was emailed to Mr. Peterson on July 19, 2022.
47. No response was received from Mr. Peterson by August 18, 2022, being 28 days from the date of service.

48. In the face of possible disbarment, Mr. Peterson elected to not make any written or oral submissions.

Submissions by the LSA on Sanction

49. On August 26, 2022, LSA counsel tendered further submissions on sanction, which were distributed to the Committee on September 2, 2022.
50. The LSA submissions were extremely helpful in providing precedent in relation to the issues of ungovernability and disbarment.
51. Moreover, counsel for the LSA advised that Mr. Peterson would need to apply for reinstatement once his prior Fees and Costs were paid. She further observed that reinstatement would not be automatic.

Analysis and Decision on Sanction

Mandate of the LSA

52. Section 49(1) of the *Act* states that:

For the purpose of this *Act*, any conduct of the member ... that:

- a) is incompatible with the best interests of the public or the members of society, or
- b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that occurs in Alberta.

53. This statutory provision is followed in the LSA Pre-Hearing and Hearing Guideline published October 1, 2021 (Guideline) which states at paragraph 102 that:

The purpose of disciplining lawyers is to protect the public interest and maintain confidence in the legal profession. By enforcing ethical and professional standards, the Law Society is fulfilling its regulatory mandate and supporting the rule of law, the proper administration of justice and the independence of the legal profession.

54. Based on the *Act* and the Guideline, it is clear that the mandate of the LSA to ensure a high degree of confidence in the legal profession and protection of the public from misconduct by the profession is essential to the viability of the profession. Accordingly, cooperation with the LSA and participation in the disciplinary process by a member is

critical. If a member can simply ignore the disciplinary process with impunity, the LSA will have abdicated its authority and ceased to have any ongoing legitimacy.

Purpose of Sanction

55. The Guideline, which was provided to Mr. Peterson in advance of the Hearing, states the purpose of sanction as follows:

187 The fundamental purposes of sanctioning are to ensure that the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.

188 Other purposes of sanction include:

- a) specific deterrence of the lawyer;
- b) where appropriate to protect the public, preventing the lawyer from practicing through disbarment or suspension;
- c) general deterrence of other lawyers;
- d) ensuring the Law Society can effectively govern its members; and
- e) denunciation of the misconduct.

189 Sanctioning must be purposeful, the factors that relate most closely to the fundamental purposes outlined carry more weight than others.

56. This overriding obligation to protect the public and foster the confidence in the profession was affirmed by the Court of Appeal in the decision of *Adams v. Law Society of Alberta*, 2000 ABCA 240 at paragraph 6 wherein the Court stated:

A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favourably and unfavourably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. **This public dimension is of critical significance to the mandate of professional disciplinary bodies** [emphasis added].

Factors in Determining Appropriate Sanction

57. There are a number of factors which must be considered in determining the appropriate sanction including the seriousness of the misconduct. This Committee is mindful, however, of the comments of the Alberta Court of Appeal in the *Adams* decision at paragraph 27 wherein the Court observed:

Further, and in any event, because the relevant facts vary greatly from case to case, care must be taken to consider each complaint in the context of its particular circumstances.

58. The ability of the LSA to govern the profession is essential to self-governance. Serious misconduct which undermines the LSA's regulatory function must be dealt with appropriately, including, where necessary, limiting the ability of the member to continue to deliver legal services.
59. A non-exhaustive list of factors to be considered in determining the appropriate sanction are contained in paragraphs 198 – 208 of the Guideline. These factors include, but are not limited to:
 - a) the degree to which the misconduct constitutes a risk to the public;
 - b) the degree to which the misconduct constitutes a risk to the reputation of the legal profession;
 - c) the degree to which the misconduct impacts the ability of the legal system to function properly;
 - d) the potential impact on the LSA's ability to legally govern its members;
 - e) the potential harm to a client, the public, the profession or the administration of justice;
 - f) the disciplinary history of the member involved;
 - g) whether the member acted intentionally, knowingly, recklessly, or negligently;
 - h) whether the member cooperated with the LSA, or alternatively, failed to respond to communications from the LSA;
 - i) whether the member practiced while suspended or inactive;
 - j) whether the conduct brought the administration of justice into disrepute;
 - k) the impact of previous sanctions on the member; and
 - l) finally, whether the member has demonstrated a desire to remain a member of the LSA.
60. One of the leading cases on sentencing factors for professional administrative bodies is the decision of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC). In that

decision, the Court outlined a non-exhaustive list of factors that should be considered in imposing the proper sanction against a professional by his disciplinary body. Those factors included:

- a) The nature and gravity of the proven allegations;
- b) The age and experience of the offending [member];
- c) The previous character of the [member] and in particular, the presence of any prior complaints or convictions;
- d) The age and mental condition of the offended [client];
- e) The number of times the offence was proven to have occurred;
- f) The role of the [member] in acknowledging what had occurred;
- g) Whether the offending [member] had already suffered other serious financial or other penalties as a result of allegations having been made;
- h) The impact of the incident on the offended [client];
- i) The presence or absence of any mitigating circumstances;
- j) The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safety and proper practice of [law];
- k) A need to maintain the public's confidence in the integrity of the [legal] profession;
- l) The degree to which the offensive conduct was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
- m) The range of sentence in similar cases.

(the "*Jaswal* Factors")

61. In reviewing both the guide and the *Jaswal* Factors, it is important to note that relationship between the LSA and its members is an important factor to take into consideration when determining the appropriate sentence. If the LSA cannot regulate its members, it can neither protect the public nor instill confidence in the profession.

Ungovernability and Disbarment

62. There are a number of precedents which discuss the concept of governability.
63. In the decision of *Law Society of Alberta v. Alan Collins*, 2007 LSA 19, the Committee directed Mr. Collins to advise four of his clients of a mistake in his contingency agreement and to correct the mistake and corresponding fee calculation. Unfortunately, Mr. Collins refused to follow the directive. The Panel found that an unwillingness on the part of Mr. Collins raised serious questions of governability which goes to the heart of public confidence in the legal profession as a self-regulating profession.
64. In the decision of *Law Society of Alberta v. Terry Britton*, 2009 LSA 1, it was alleged that Mr. Britton failed to follow the accounting rules of the LSA; failed to cooperate fully with the investigation of the LSA; and failed to respond to the LSA on a timely basis and in a complete and appropriate manner. In deciding to disbar Mr. Britton, the Hearing Committee noted “the overwhelming evidence of the ungovernability of the Member based on his lack of response to or cooperation with the LSA, his failure to attend the pre-hearing conference and to participate in the scheduling of or to attend this Hearing...”.
65. In the decision of the *Law Society of Alberta v. Enge*, 2009 ABL 36 Mr. Enge faced five citations including failure to cooperate with the Law Society during the course of an investigation. In determining sanction, the Hearing Committee acknowledged that some of the citations would not necessarily attract a sanction of disbarment. However, the Hearing Committee felt it would be moot to attach lesser sanctions to those citations when the member’s ungovernability “dictates a sanction of disbarment” for a citation which was his failure to cooperate with the SA during the course of its investigation.
66. In the decision of *Riccioni v. Law Society of Alberta*, 2015 ABCA 62, the Alberta Court of Appeal upheld the decision to disbar Mr. Riccioni for ungovernability as reasonable. At paragraph 33 the Alberta Court of Appeal states:

The Appeal Panel dealt with “ungovernability”. In our view, that term is more likely to refer to a lawyer’s conduct *vis a vis* the Law Society, than to his conduct with clients or fellow lawyers. And in fact, the Appeal Panel supported its decision on ungovernability with reference to a number of occasions where the Appellant had been untruthful with the Law Society investigator. In light of all that, no actual legal or factual error is shown, and the weight attached by both tribunals does not appear to us to be outside what is reasonable [emphasis added].

67. Although reference was made to several other authorities by LSA counsel, the final authority this Committee will specifically refer to is the decision of the Alberta Court of Appeal in *Virk v. Law Society of Alberta*, 2022 ABCA 2. In that decision, the Court

observed that the primary objective of the process is not to punish the Appellant but to protect the public. At paragraph 40 of the decision, the Alberta Court of Appeal states:

Disbarment is the most severe sanction, but it is not reserved for cases involving dishonest dealings with money, nor is it reserved for the hypothetical “worst case and worst offender”. Every case is different, and comparison with other decisions is rarely decisive. The need to restore public confidence in the profession and to protect the public will vary. As a result, such comparisons have limited weight in demonstrating that a sanction is demonstrably unfit. The Appeal Panel was not required to identify the most directly comparable prior case and impose a similar sanction [emphasis added].

68. In *Virk*, the Alberta Court of Appeal quoted from the decision of the *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 (CanLII), [2003] 1 SCR 247 at paragraph 59 which stated, in part, “there is nothing unreasonable about the Discipline Committee choosing to ban a member from practicing law when his conduct involves an egregious departure from the rules of professional ethics and had the effect of undermining public confidence in basic legal institutions”.

Decision on Sanction

69. This Committee agrees with the reasoning in the *Enge* decision that it makes little sense to separate the two Sanctions given the ultimate conclusion that Mr. Peterson should be disbarred. We will, however, note that conduct of Mr. Peterson in relation to either of the Citations warranted a much more severe sanction than yet another short-term suspension. The previous two suspensions have served no effective purpose.
70. Based on the facts of this case, and the sentencing factors set out above, the Committee finds that disbarment is a just, reasonable, proportionate, and appropriate sanction, based on the following:
- a) Mr. Peterson has amply demonstrated that he will not cooperate with the LSA;
 - b) Mr. Peterson has amply demonstrated that he will impact the ability of the LSA to regulate its members;
 - c) Mr. Peterson has amply demonstrated that he will not participate in the disciplinary process;
 - d) Mr. Peterson has amply demonstrated that he will not abide by a suspension;
 - e) Mr. Peterson has amply demonstrated that he will not pay Fees to the LSA;
 - f) Mr. Peterson has amply demonstrated that he will not pay Costs to the LSA;
 - g) Mr. Peterson has amply demonstrated that he will deceive and mislead clients;
 - h) Mr. Peterson has amply demonstrated that he will accept and keep legal fees without providing any corresponding legal services;
 - i) Mr. Peterson has amply demonstrated that he is a danger to the public;

- j) Mr. Peterson has amply demonstrated that he will negatively impact confidence in the legal profession;
- k) Mr. Peterson has amply demonstrated that he will not accept responsibility for his actions;
- l) Mr. Peterson has amply demonstrated that he will not express remorse for his actions;
- m) Mr. Peterson has amply demonstrated that he will act while suspended; and
- n) Mr. Peterson has amply demonstrated that he will bring the administration of justice into disrepute.

71. Moreover, based on the sanctioning principles enumerated above, it is clear that:

- a) Disbarment serves as an appropriate denunciation of Mr. Peterson's deliberate decision to refuse to cooperate with the LSA and forgo participation in the disciplinary process;
- b) Disbarment serves as an appropriate specific deterrent for Mr. Peterson, who has demonstrated that he will not abide by a suspension;
- c) Disbarment is necessary to protect the public; and
- d) Disbarment is necessary to protect the profession.

72. The Committee recognizes that disbarment is the ultimate sanction. It is, nonetheless, necessary in the circumstances.

73. In accordance with section 72 of the *Act*, the Committee orders that Mr. Kevan Peterson be disbarred forthwith.

Concluding Matters

74. LSA Counsel has provided the Committee with a Statement of Costs, prepared in accordance with Rule 99. The costs, as set out, in the amount of \$2,888.03, are considered by the Committee to be reasonable and appropriate. The member is to pay costs in the amount of \$2,888.03 forthwith.

75. A referral of these proceedings will not be provided to the Attorney General.

76. There will be a Notice to the Profession as mandated by section 85 of the *Act*.

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

Dated December 22, 2022.

Edward Feehan, KC - Chair

Grace Brittain

Glen Buick