

**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 GURPREET GILL  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Bud Melnyk, KC – Chair  
Ryan Anderson, KC – Bencher  
Louise Wasylenko – Lay Bencher

**Appearances**

Shanna Hunka – Counsel for the Law Society of Alberta  
Simon Renouf, KC – Counsel for Gurpreet Gill

**Hearing Dates**

January 29, 30, 31, 2024, February 1, 2024 and April 3, 2024

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Overview**

1. The following citations were directed to hearing by the Conduct Committee Panel on December 13, 2022 as conduct deserving of sanction:

*Complaint CO20210016*

- 1) It is alleged Gurpreet S. Gill sexually harassed a prospective employee.
- 2) It is alleged Gurpreet S. Gill disclosed confidential client information to third parties without consent.
- 3) It is alleged Gurpreet S. Gill interfered in a Law Society investigation.
- 4) It is alleged Gurpreet S. Gill failed to reply promptly and completely to communications from the Law Society of Alberta.

*Complaint CO20210767*

- 5) It is alleged Gurpreet S. Gill failed to comply with Rule 119.27 of the Rules of the Law Society of Alberta when undisbursable trust money was not handled properly.
- 6) It is alleged Gurpreet S. Gill failed to comply with the Rules of the Law Society of Alberta that set out the requirements for client identification and verification.

*Complaint CO20220051*

- 7) It is alleged Gurpreet S. Gill sexually harassed an employee, A.K.
  - 8) It is alleged Gurpreet S. Gill sexually harassed an employee, B.W.
  - 9) It is alleged Gurpreet S. Gill sexually harassed an employee, S.M.
2. On January 29, 2024 the Hearing Committee (Committee) convened a hearing into the conduct of Gurpreet Gill, based on the above citations. Further evidence was heard on January 30, 31, 2024 and February 1, 2024. Closing arguments were made by counsel on April 3, 2024.
  3. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the Law Society of Alberta (LSA) and Mr. Gill, for the reasons set out below, the Committee finds Mr. Gill guilty of conduct deserving sanction on citations 1, 2, 3, 5, 6 and 8 and not guilty on citations 4 and 9, pursuant to section 71 of the *Legal Profession Act*, RSA 2000, c. L-8 (*Act*).
  4. The Committee was advised by LSA counsel that they would not be calling any witnesses in respect of citation 7. Accordingly, citation 7 is dismissed.

**Background**

5. At the time of the Hearing Mr. Gill was 51 years of age, married with two adult children. Mr. Gill obtained his law degree in India. After practicing law in India, he and his family emigrated to Canada. Mr. Gill articulated with an Edmonton lawyer in 2009 and he started his legal practice in September of 2009 as a sole practitioner.
6. Mr. Gill's practice grew and in 2020 he had about 10 employees and his practice consisted of immigration law, criminal, family and real estate. Mr. Gill's current status with the LSA is non-practicing after he voluntarily became inactive in 2021.

## **Preliminary Matters**

7. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested so a public hearing into Mr. Gill's conduct proceeded.

### **Citation 1**

8. This citation alleges that Mr. Gill sexually harassed a prospective employee, namely SM.

#### *Interviews on December 14 and 16, 2020*

9. Mr. Gill testified that he was approached by a client, PS, about whether Mr. Gill was hiring staff since PS knew the parents of SM. Mr. Gill advised PS he was looking for a criminal law assistant and that he would be willing to interview SM. Mr. Gill stated that he told PS that criminal matters required a mature person since these matters sometimes involved "mainly dirty stuff which you have to watch, sexually explicit stuff".
10. SM testified that she had an initial telephone interview on December 14, 2020 where she was asked by Mr. Gill "how physically built up" she was, which question SM found to be "unconventional". She stated that Mr. Gill advised her that he was looking for a "confident and smart looking person". Mr. Gill acknowledges asking SM about her physical fitness because the office building has no elevators and sometimes help is needed (due to a car accident injury suffered by Mr. Gill) in carrying boxes from the parking lot to the office.
11. SM stated that she advised Mr. Gill during this first interview that she is fluent in English, Hindi and Punjabi, but Mr. Gill did not ask SM any questions about her fluency in Hindi or Punjabi. Mr. Gill asked SM to send him a resume and two photographs of herself, which she did.
12. A second interview by telephone took place on December 16, 2020. Mr. Gill testified that he had requested that a female associate conduct the interviews, but that person was unavailable. SM testified that during this interview Mr. Gill asked her if she had a boyfriend since Mr. Gill did not want a boyfriend showing up at the office and forcing himself into the office if SM was working late. Mr. Gill stated that he asked SM if she had a boyfriend or spouse because there would be times when she would have to work late (because of time zone differences with offices in India) and that Mr. Gill has had past experiences where a spouse or boyfriend has objected to the late or early hours of work. Also of concern to Mr. Gill were children and the ability to obtain after-hours childcare or daycare.
13. Mr. Gill also asked SM if she had any future marriage plans, her age and if her cellphone had a password. Mr. Gill's evidence was that he denied asking SM if she had any plans to marry, though Mr. Gill admits he did ask SM if she was married and her age.

14. Mr. Gill's evidence was that during the second interview, he asked very basic questions over about 15 to 25 minutes such as career plans and education, long term plans and maintaining client confidentiality. Mr. Gill testified that his HR assistant was present during the interview along with a brief appearance by another student. Mr. Gill stated that he asked SM if she was good at translation from Punjabi to English, to which she replied that she can do such translations. Also discussed was confidentiality and that there can be no "pillow talk" with a spouse.
15. SM gave evidence that, in a suggestive tone, Mr. Gill said that SM had a beautiful smile, and that this would lead to a success in her career with Mr. Gill and in any later career. However, in the photographs SM provided to Mr. Gill she is not smiling.
16. Mr. Gill testified that subsequently he has learned that the *Alberta Human Rights Act* specifically prohibited the asking of certain questions and that he would be "very careful" in the future.
17. At this second telephone interview, Mr. Gill's evidence was that he told SM that he would be sending her videos to assess if she was "thick skinned and emotionally strong". Mr. Gill stated that he read out a disclaimer to SM during the telephone interview which was to the effect that SM was to keep any WhatsApp videos from Mr. Gill's law firm strictly confidential and that the video "might contain some obscene/private contents" and the purpose of this was to measure the "maturity level and emotional quotient" of SM. Mr. Gill testified that he advised SM that he would be sending her "some material which will be sexually explicit and heavy material, and [he] talked to her that one would be the two videos and then would be the RCMP letter".
18. According to SM nothing was discussed about any videos or their contents and nothing was said about the videos being confidential. It was the evidence of SM that at no time did Mr. Gill advise her about the sexually explicit nature of the videos.
19. Mr. Gill testified that he told SM that he wanted her to translate from Punjabi to English. SM stated that at no time did Mr. Gill indicate that he wanted SM to translate the videos from either English to Punjabi or vice versa.
20. SM stated that the interview took only 13 minutes and in evidence was a telephone log confirming this length of time. On cross examination Mr. Gill was challenged that he could not have done the interview and read out the disclaimer in only 13 minutes to which Mr. Gill indicated that the interview was some 20 to 30 minutes.
21. Following the interview on December 16, 2020, SM received two videos from Mr. Gill showing persons having sexual relations and the videos were of explicit sexual content (Videos). Also forwarded was a letter from the RCMP which was addressed to NS (which was a client of Mr. Gill) and appeared to deal with an immigration matter. SM

stated that she was shocked and taken aback by the Videos. SM advised that she never shared the Videos with anyone other than the LSA.

22. As regards the RCMP letter, SM, who is from India, testified that she felt this was done to intimidate her about her residency status in Canada. SM was vulnerable at this time in respect of her residency status in Canada. According to SM, at no time did Mr. Gill ask SM to translate this letter from English into Punjabi.
23. On cross examination Mr. Gill confirmed that the Videos were sexually explicit and involved his client, GS, and an unidentified female (which was apparently a former girlfriend of GS). Mr. Gill admitted that he did not obtain the consent of the female in the Videos to release the Videos to SM because this person was not his client.
24. After receiving the Videos, SM sent Mr. Gill a WhatsApp message at 11:00 p.m. on December 16, 2021 where she states:

Subsequent to my application of employment in your office (resume and my two professional photographs sent on your WhatsApp as you directed), you have indulged in progressively inappropriate conversations and messages. You have sent me two pornographic videos as an excuse of a Prerequisite for the employment. This conduct does not fit in the professional standards to hire prospective employees and has caused me emotional distress. Please do not follow with any more messages and phone calls.
25. Despite this message, Mr. Gill acknowledges that he proceeded to message SM trying to explain why he sent the Videos and asked her to delete them and to keep them confidential. Mr. Gill replied to this message and instructed SM to delete the pornographic Videos stating that the Videos are “confidential and belong to his client files”. Mr. Gill stated that the sharing of pornographic videos was a “requirement of our profession as there is a lot of stuff which needs to be translated and these are parts of our court files and u can confirm by visiting our office”.
26. SM testified that Mr. Gill then repeatedly tried to call her aunt, JS (who had referred SM to Mr. Gill), and he sent JS messages asking for a reply, which caused SM “significant distress”. SM further stated that the events had a profound effect on her such that she has persistent trauma, fear of surroundings and paranoia for which she has sought psychological help.
27. When asked about sending the two sexually explicit Videos to SM, Mr. Gill testified that he was engaging in “out-of-the-box thinking” to see if SM could translate from Punjabi to English. Mr. Gill’s evidence was that he sent the RCMP letter also with the intention of seeing if SM could translate that letter from English to Punjabi. Also, Mr. Gill stated that he wanted to see if SM “could handle some sexually explicit stuff or not”.

28. Mr. Gill admitted that he should have done things differently such as doing an in-person interview and only playing the audio portion of the Videos. While saying that he “screwed up”, Mr. Gill would not admit under cross examination that it was inappropriate to have sent the Videos and as such, Mr. Gill denies sexually harassing SM.

29. Mr. Gill’s lawyer’s letter to the LSA on November 11, 2022 stated, in part:

I needed a mature assistant, who needed to be prepared to work late nights if needed because sometimes the parents of international students, who were already in Canada, need consultations for their children for matters related to sexual assault, DUIs, aggravated assault, child pornography etc. and I needed a mature minded assistant who would not shy away or be distracted by the terminology and sexually explicit contents of such cases.

....

It is very important for a criminal lawyer’s assistant to have enough of a maturity level where he or she can watch and assimilate matters related to sexual assault. My own practice dealt with cases of sexual assault and child pornography, etc. cases which involved being able to review explicit material, making notes, and translating words from Punjabi to English language. These was the entire reason these videos were sent to [SM], to test her emotional maturity and capabilities to handle such heavy material with full confidentiality. [SM] blew that confidentiality in one hour, and the way in which she took this matter out of context is evident from this incident.

#### *Cease and Desist Letter*

30. The Committee heard testimony from MS, the uncle of SM, who has a very close relationship with SM. MS first met Mr. Gill in October of 2020 when Mr. Gill prepared a Personal Directive for his aging parents. MS stated he was not aware that his niece, SM, had applied for a job with Mr. Gill, but on December 16, 2020 MS was informed that his niece was “stressed” as a result of the interview with Mr. Gill. MS eventually assisted SM in contacting the LSA.

31. Initially MS stated that he approached his neighbours, PS and RS, since they knew Mr. Gill and MS was hoping that these neighbours might speak with Mr. Gill, but this contact with Mr. Gill never happened. MS testified that after the complaint was filed, he did hear from his neighbours, PS and RS, around March 2 or 3, 2021. PS met with MS on three occasions and asked if they could “just take the complaint back”. On March 6, 2021 MS had an in-person meeting with PS who advised MS that he was sure that Mr. Gill did not have an improper intention.

32. On March 27, 2021 MS testified that he was served with a cease-and-desist letter from Mr. Gill’s lawyer. The letter stated that Mr. Gill had expressed “serious concerns about

your conduct in relation to both defamatory comments made by you about him as well as your distribution of various confidential videos and documents without Mr. Gill's permission." MS confirmed during his testimony that he was never in possession of the Videos or confidential documents and that he has never made any defamatory comments about Mr. Gill.

33. As regards the cease-and-desist letter, Mr. Gill testified that he was concerned that MS and his family might have been talking with other persons such as PS and his family about the contents of the Videos. Mr. Gill wanted to be sure that the Videos were not being shared with anyone else. On cross examination Mr. Gill admitted that he assumed that SM had shared the Videos with third parties, but he had no evidence to support that allegation.

## **Citation 2**

34. Citation 2 alleges that Mr. Gill disclosed confidential client information to third parties without the consent of his client, GS. This citation specifically revolves around the Videos sent to SM on December 16, 2020, containing explicit sexual content which involved Mr. Gill's client, GS, and whether GS consented to the release of these Videos.

### *Signing of Authorization and Consent*

35. GS had hired Mr. Gill to deal with a criminal charge of sexual assault that involved a former girlfriend of GS. In support of his defence, GS had provided Mr. Gill with the Videos that showed GS and his girlfriend engaged in consensual sexual activity. GS advised that the criminal charge was stayed by the Crown in September 2020 and at no time did the Crown make application to have the charge reopened.
36. GS stated that on February 14, 2021 Mr. Gill called him and advised that the girlfriend was going to "reopen the case". GS's evidence was that on this date, which was a Sunday, he went to the offices of Mr. Gill. GS was accompanied by his sister, HG, and his wife, MG, but they waited in the lobby while GS met in the office with Mr. Gill. At this meeting GS gave evidence that Mr. Gill presented him with a document, which is reproduced as follows:

#### **Authorization and Consent to Share Information with VLG Lawyers**

I, [GS], am a client of VLG Lawyers with regards to my sexual assault file. I unconditionally allow VLG Lawyers to use videos relating to my file for the purposes of staff training, learning, translation, and for their recruiting and staff development purposes.

Dated on 16 day of September, 2020

[Redacted Signature]

[Redacted Signature]  
Gurpreet Gill  
VLG Lawyers

(Authorization)

37. GS testified that Mr. Gill told him that the Authorization was “just a formality” and that he signed it on February 14, 2021. GS admits that he signed the Authorization but that when he signed there was no date on the Authorization. GS’s further evidence was that he could not understand what was written on the Authorization and that Mr. Gill did not translate the document. After GS signed, Mr. Gill signed the Authorization, but did not add any date.
38. GS testified that he had a limited understanding of English and that he never gave permission for Mr. Gill to share the Videos outside of the criminal matter.
39. Mr. Gill acknowledges that GS telephoned him on February 12 or 13, 2021 because GS was contemplating a driving test for long-haul trucking and the potential employer needed clarification about the nature of a stay. In addition, Mr. Gill was still actively working on the immigration file of GS’s spouse, MG, who had spent some 15 to 20 days at the offices of Mr. Gill.
40. GS’s sister, HG, also gave evidence around the circumstances of the meeting with Mr. Gill as follows:
  - (a) HG stated that GS contacted her on February 14, 2021 saying that Mr. Gill had called and said that the girlfriend had “reopened the case” and that GS wanted HG to help and come with him to see Mr. Gill. HG testified that she attended at the initial meeting on February 14, 2021 with Mr. Gill because her brother’s writing and reading of English “is really bad”, but she did say that GS can speak a “little bit.” HG stated that she, GS and GS’s spouse, MG, attended together to see Mr. Gill on February 14, 2021.
  - (b) HG further testified that Mr. Gill had advised them that the girlfriend had “planted a girl and she has hired security guards and is reopening the case again.”
  - (c) HG’s evidence was that when they arrived, which was after office hours, at Mr. Gill’s office, that Mr. Gill had to obtain a key from a women’s wear store to get



access to the lobby doors. HG and MG were asked to wait in the waiting area while GS and Mr. Gill met in his office.

41. Mr. Gill also refutes the claim by GS and his sister, HG, that on February 14, 2021 that Mr. Gill retrieved a key for his office from a women's wear store. Mr. Gill stated that it made no sense that he would need to retrieve his office key from a women's wear store. Furthermore, the office door has a digital lock according to Mr. Gill, and no key is needed.
42. The Committee also heard from SF, an LSA investigator. SF had been an investigator with the LSA for 10 years and prior to that he was with the Calgary Police Service for 27 years. SF had investigated the complaint arising from SM regarding the Videos. SF gave the following evidence:
  - (a) SM sent SF the Videos, which SF watched. SF stated that they contained explicit sexual activity between an adult male and an adult female where you could see both of their faces and their genitalia. The Videos were short in duration and contained audio in Punjabi.
  - (b) The adult male in the Videos was a client of Mr. Gill who had been charged with sexual assault. The Videos were used by Mr. Gill in support of his client's defence and the criminal charges were ultimately stayed.
  - (c) The female adult in the Videos was never a client of Mr. Gill and at no time did Mr. Gill have her consent to sharing the Videos.
  - (d) SF received the Authorization from Mr. Gill which was signed by Mr. Gill's client, GS.
  - (e) SF asked Mr. Gill for the electronic copies of the Authorization, but Mr. Gill did not have any electronic copies. Mr. Gill advised SF that the clients created the consent authorizations, and that Mr. Gill gave his clients memos in Punjabi so that the clients would understand what was being asked for in the authorizations. Mr. Gill then advised SF that on the basis of those memos the clients would create their own consent and authorization documents.
43. A Google map location screenshot was received by SF from HG which was dated 6:15 p.m. on March 1 (no year, but evidence was that it was 2021) and contained an address that was in the same building complex where Mr. Gill's office was located (Location Screenshot). The time stamp of 6:15 p.m. was very close to the 6:10 p.m. time of the March 1, 2021 email from GS to SF (which email is detailed below). On cross examination SF stated that the address on the Location Screenshot was the address of a restaurant in the vicinity of Mr. Gill's office.

44. During his testimony, Mr. Gill confirmed that GS was his client and that GS had been charged with sexual assault and the Videos in question involved GS with a female third party.
45. Regarding the Authorization, Mr. Gill testified that this was signed on September 16, 2020 and disputes the evidence of GS that it was signed February 14, 2021. Mr. Gill testified that he uses such Authorizations on other files where there is something “unique and different” about the matter.
46. Mr. Gill testified that he provided GS with a Punjabi translated version of the Authorization in early September 2020 which was handwritten by Mr. Gill so that GS could understand the nature of the Authorization. The translated Punjabi handwritten document (with necessary names redacted) reads as follows:

Request [GS]

I, Gurpreet Singh Vakeel, (*unclear*) lawyers, hereby inform you that I would like to use some video recordings of your file for new recruitment and training at our office. I need your consent before being able to use two video clips from your criminal file. You may take your time and seek independent legal advice after which you can refuse to give it to me. You can either consent to this or refuse. Please let me know whether or not you will consent to this in the next few days. Should you agree, please send a consent letter written in either English or Punjabi. We would then both need to sign that consent letter and add it to the file, and only then would we be able to use the video clips for our recruiting efforts, staff training and development.

Gurpreet Gill

<signed>

Sep 5, 20 (date cut off)

(Punjabi Consent)

47. After about two weeks, Mr. Gill stated that GS came back on September 16, 2020 and signed the Authorization. Mr. Gill also stated that the actual Authorization was not drafted by him, but rather it was prepared by GS, and that the Authorization was drafted by GS because this was the “standard practice” of Mr. Gill.
48. Mr. Gill was questioned about his November 11, 2022 reply letter to the LSA where he stated: “It is also important to mention here, that [GS] gave consent in Punjabi and I specifically used Punjabi so that he understands what he is signing when he signed the document.” On the Punjabi Consent there is no evident signature of GS, though Mr. Gill says that the signature is cut off.

49. Mr. Gill provided in evidence two documents as follows:

- (a) A Punjabi handwritten document, dated December 11, 2020, which was signed by another client, NS, and translated as follows:

Request [N.S.],  
I, [GS], hereby inform you that I would like to use the RCMP letter dated November 16, 2020, of your file for new recruitment and to use it for training. I am requesting your written consent authorizing me to use this letter. You are free to either give your consent to this or to refuse. You may seek independent advice from another lawyer. Please think about it and let me know whether or not you will consent to this in the next few days. I cannot use that letter without your consent. Should you agree, please send a consent letter written either in English or Punjabi. We would then both need to sign that consent letter and only then would I be able to use that letter.  
<illegible signature>  
Dec 11, 2020


(NS Punjabi Consent)


- (b) An Authorization and Consent form which had also been signed by NS, which was similar to the Authorization signed by GS. This form was as follows:

### Authorization and Consent

I, [NS] of Red Deer, Alberta, am a client of VLG Lawyers with regards to my dispute with RCMP in Red Deer, Alberta. I allow VLG lawyers to use RCMP correspondence dated November 16, 2020 which I sent to Gurpreet Gill via Whatsapp for the purposes of staff training, learning, translation, and for their recruiting and staff development purposes. However, he cannot share my personal identity documents like my driving license or passport with anyone.

Dated on 11 day of December, 2020

  
\_\_\_\_\_  
N S

  
\_\_\_\_\_  
Gurpreet Gill  
VLG Lawyers

(NS English Consent)

50. Mr. Gill testified that he first provided NS with the NS Punjabi Consent, which was signed with Mr. Gill on December 11, 2020. On that same day NS signed the NS English

Consent. Mr. Gill further stated that the last sentence of this NS English Consent, which references not sharing personal identification, was added by NS.

51. It was pointed out to Mr. Gill during cross examination that the Authorization of GS and the NS English Consent use the same exact phrase:

... for the purposes of staff training, learning, translation, and for their recruiting and staff development purposes.

52. In reply, Mr. Gill testified that he advises clients that he wants this exact phrase to be in any authorization and that the clients typed up these authorizations. Mr. Gill stated that he did not help write either the Authorization or the NS English Consent but told the client that he would be “appreciative if you could put these words because that’s what I need for the purposes of training, translation, and recruiting”. Mr. Gill also pointed out that the NS Punjabi Consent had the following statement, “... I would like to use some video recordings of your file for new recruitment and training at our office.”

53. It was also pointed out to Mr. Gill during cross examination that the Authorization and the NS English Consent had virtually the same heading, signature line and the place to indicate the date. Mr. Gill replied that, “I give them broadly how that should be.”

54. Regarding the RCMP letter that was sent to SM, which referenced another client of Mr. Gill, NS, Mr. Gill gave evidence that he was acting for NS regarding a contractual issue with the RCMP.

### **Citation 3**

55. Citation 3 alleges that Mr. Gill interfered in an LSA investigation and, in particular, this citation relates to two emails sent from the cellphone of Mr. Gill’s client, GS, dated March 1, 2021 and March 3, 2021.

#### *March 1 and 3, 2021 Emails*

56. GS gave evidence that during the office meeting with Mr. Gill on February 14, 2021 that Mr. Gill advised him that in case he received any emails from the LSA that GS should not reply to those emails, but rather should directly come to the offices of Mr. Gill. This claim by GS was denied by Mr. Gill. GS confirmed on cross examination that Mr. Gill had told him that he should be expecting an email from the LSA since Mr. Gill had provided the LSA with GS’s email address.
57. As already noted, the LSA investigator, SF, had received the Authorization from Mr. Gill. SF testified that he wanted to follow up with GS about the Authorization and SF left GS a voice mail message on February 24, 2021 and he also sent GS the following email:

From: [SF]  
Sent: February 26, 2021 9:45 AM  
To: [GS] <email address of GS>  
Subject: Matter concerning Mr. Gurpreet Gill

Mr. [GS],

I understand Mr. Gill may have been in contact with you to provide some background.

Please confirm this email and/ or provide a phone number where I may contact you so I may explain further.

[SF]  
Investigator

58. Not having heard a reply from GS, SF sent a further email to GS on March 1, 2021, which stated:

From: [SF]  
Sent: March 1, 2021 8:28 AM  
To: [GS] <email address of GS>  
Subject: FW: Matter concerning Mr. Gurpreet Gill

Mr. [GS],

I understand Mr. Gill exchanged some information with you which lead to your creation of consent form you signed?

Please provide copies of the information related to the consent form including the electronic (soft copy) Word.doc of the form exchanged with Mr. Gill.

Are you aware that copies of the videos (which identify you and another person) were **sent to a person who does not work for Mr. Gill** and that person now has possession of those videos?

I would like to know more about these circumstances and it is important that the Law Society understands the situation completely.

Please note the proceedings under the Legal Profession Act concerning alleged conduct of Alberta lawyers are private up to the point of a Hearing, should one occur.

Should there be a Hearing, effected parties may apply to have portions of the Hearing held in private.

A witness in proceedings before a Hearing Committee may be examined on all matter relevant to the hearing.

59. GS stated that he received this email from SF on March 1, 2021 and that he proceeded to call Mr. Gill and GS was advised to come see Mr. Gill after close of office hours. GS testified that he went on March 1, 2021 to the offices of Mr. Gill at which time Mr. Gill, using the cell phone of GS, proceeded to type out a response to the March 1, 2021 email of SF. The email that was sent using the cell phone of GS, was as follows (typographical errors included):

From: GS <email address of GS>  
Sent: March 1, 2021 6:10 PM  
To: SF  
Subject: Re: FW: Matter concerning Mr. Gurpreet Gill

First i never have any issues with videos and i never approached you about it. Why are u doing this fishing expedition when i have no problem with anything. It is very strange as your email is very inappropriate and tricky. I gave Mr Gill permission to share videos for recruiting,training of staff with unconditionally consent and i trust mr gill as a honourable lawyer,if he sent videos to any third party i have no objection in it as I gave my consent in writing to him in year sep 2020. If it help tgem to select right people I have no problem at all,why u have a problem when i never complained about anything. I drafted consent given to him and I don't have soft copy of it as i formatted my laptop and sent to India for farmers struggle at Delhi as donation as they need lot of laptops there.i have hard copy and i am attaching it.i have no objection to my video with a third person as i trust mr gill discretion to any person for hus recruitment or training as long as they are through what app encipted end to end. Whole world is virtual nowadays and i have no problem as I have not canceled my consent as of today. Why are u putting me in trouble when i never complained to u and what power u have to force me for such statements when i never complained to u for anything. U look to be a very suspicious man and wording u wrote in ur email is very suspicious and inappropriate.I want to talk to ur supervisor,give me ur supervisor email as ur email is very very suspicious,why r u dragging me when I have no issues with transfer of such videos.My consent to mr gill is solid without any exception or pressure or confusion and still valid, who r u to question this when i never complained about anything. I will sue u if u put me in any trouble with ur suspicious behaviour.I am sending u my consent and review it and let me if u have any further questions and don't forget to email me ur supervisor number and i prefer only email communication especially with ur suspicious personality.  
Thanks  
[GS]

(March 1, 2021 Reply Email)

60. GS subsequently provided the LSA with the Location Screenshot that appears to be a map at or near Mr. Gill's office address. GS testified that this screenshot, which was dated March 1, 2021, and taken on his cellphone, confirmed that he attended at Mr. Gill's office on that date.

61. GS also gave evidence that after Mr. Gill sent the March 1, 2021 Reply Email, he was told by Mr. Gill that if GS received any further emails from the LSA that GS was not to reply to those emails. In addition, GS was told by Mr. Gill that if he receives a telephone call from the LSA that he should “yell and verbally abuse them” because they are “just the security guards”.
62. The LSA investigator, SF, gave evidence about his concerns with the March 1, 2021 Reply Email and, in particular:
- (a) SF was aware from GS’s interactions with the police that GS was not fluent in English. However, SF was struck by the amount of typing in English.
  - (b) SF also felt that the March 1, 2021 Reply Email was “confrontational” given that SF’s email of March 1, 2021 was “merely wanting to get confirmation that a consent form had been signed and that he had, in fact, created that consent form.”
  - (c) The email from GS stated in the last sentence: “I prefer only e-mail communication, especially with your suspicious personality.” SF found this comment dubious given that GS was not fluent in English. SF also found it odd that GS would characterize the initial email as being inappropriate contact.
63. Given the suspicions of SF about the March 1, 2021 Reply Email, the Manager of Investigations with the LSA, JD, sent GS an email on March 3, 2021 asking GS if they could speak. GS testified that he received this email from JD on March 3, 2021 and GS said that he again went to see Mr. Gill. GS gave evidence that at this meeting Mr. Gill again took GS’s cell phone and proceeded to type out a reply email. That reply email was as follows (typographical errors included):

From: GS <email address of GS>  
Sent: March 3, 2021 6:52 PM  
To: JD <email address of JD>  
Subject: Re: FW: Matter concerning Mr. Gurpreet Gill

Hello,  
Sorry late reply as I work all day.I find email of ur investigator very offending and inappropriate and it relate to my file.I don't want to repeat but this was very inappropriate way of asking things.I have given clear written consent to mr gill unconditional and this video was mot a secret video from any hidden camera and there is no expectancy of any privacy inthis video.Yes i authorise mr gill to share this with any thurd party for recruiting,translating,training and development purposes for his staffing needs.I trust his judgment to whomever he sent as he is a very well respected and honest person.I have not canceled my consent and I already sent to u.I have no issues with it if it is in possession of a third party through mr gill as long it is sent through end to end to end encryption medium.

I felt offended with ur junior email as it was very secretive abd fishy. I replied everything and if u have a formal complaint form send me by email against him as his email is threatening and has bullying tone. I will talk to via email since i no longer trust u guys. This is my feedback and don't bother me un necessarily and send me everything in writing nothing orla. I work 13 hours a day and always reply late evening. I will reply within 48 hours depending on my work schedule.

Thanks and please note my feedback properly.

[GS]

(March 3, 2021 Reply Email)

64. JD received the March 3, 2021 Reply Email, which also raised a number of concerns with SF as follows:

- (a) There was a “fair bit of English” and the use of such words as “unconditional” and “no expectation of privacy” as being unusual for person whose English language skills were not strong.
- (b) GS appeared to be offended by the request to speak in person and that this was none of the Manager’s business.
- (c) GS had used the phrase “end-to-end encryption medium”, which was a term used by Mr. Gill when he was explaining why he used the WhatsApp application. In the letter of November 11, 2022 to the LSA Mr. Gill is quoted as follows:

*The screening videos were sent to Ms. [SM] over WhatsApp, which is widely recognized as being the world’s most secure end-to-end encrypted medium.*

65. The March 3, 2021 Reply Email also used the expression: “I have no issues with it if is in possession of third party through mr gill as long as it is sent through end to end encryption medium.” Mr. Gill, on cross examination, denied that he had inserted the word “medium” in the March 3, 2021 Reply Email.

66. GS stated in his evidence that he never dictated or typed the March 1, 2021 Reply Email or the March 3, 2021 Reply Email and that both of these emails were written by Mr. Gill.

67. Regarding the claims by GS that Mr. Gill authored the March 1, 2021 Reply Email and March 3, 2021 Reply Email, Mr. Gill’s evidence was that this was “totally incorrect”. Mr. Gill had earlier advised the LSA investigator that he had “screwed up” (in reference to the SM matter) and it would not make any sense for him to complicate matters further by pretending to be GS.

68. Mr. Gill was also questioned about the use of more significant words in the March 1, 2021 Reply Email and March 3, 2021 Reply Email such as “Honorable lawyer”,



“recruitment”, “suspicious” and “inappropriate”. Mr. Gill’s response was that GS spoke “good English” and that GS would not have any problems using these words.

69. Mr. Gill agreed that both the March 1, 2021 Reply Email and March 3, 2021 Reply Email suggested that GS was a “little mad” (as in being upset).
70. It was pointed out to Mr. Gill that on the March 1, 2021 Reply Email the last name of GS had been spelled incorrectly (missing a letter). Mr. Gill stated on cross examination that in Punjabi you can write the last name of GS in both ways.
71. It was also pointed out on cross examination that the March 1, 2021 Reply Email i was signed off, “Thanks [GS]” which was also how Mr. Gill signs off on his emails. Mr. Gill’s evidence was that in his culture that “we hardly put comma after thanks.”

#### *Post March 3, 2021 Events*

72. The sister of GS, HG, gave evidence about the circumstances regarding the March 1, 2021 Reply Email and the March 3, 2021 Reply Email as follows:
  - (a) On March 25, 2021 HG’s son was having difficulties with a game being played on GS’s cell phone. HG started to check the cell phone when she accidentally opened the emails of March 1, 2021 Reply Email and the March 3, 2021 Reply Email.
  - (b) HG said she found these two reply emails “shocking”. When HG asked GS about the emails GS said that Mr. Gill sent them.
73. HG testified that she then sent an e-mail to the LSA investigator, SF, advising that GS did not know anything about the March 1, 2021 Reply Email or the March 3, 2021 Reply Email. That email was as follows (typographical errors included):

From: GS <email address of GS redacted>  
Sent: March 25, 2021 2:00 PM  
To: SF

Hi How are you?

Hi this is [GS]'s sister [HG].Actually [GS] don't understand English. Actually he didn't write any email to you by himself the all emails have been written by Mr gill vlg lawyer in his office by using [GS]'s phone today my brother [GS] showed me that emails .but it seems to be something wrong in it.So can you see us so we want to know what's going on.we are not understanding anything. He just told [GS] it's something regarding his sexual assault case that is already done in September 2020.So can you tell us what is the matter

.we want to know about that.so please can you see us as soon as possible  
we want to see you.please call him at [--] that's [GS]'s phone number but he  
can't

Understand English properly so If you don't mind he can put me in conference  
call so I can talk to you.

Thanks

74. HG also sent SF a further email on April 21, 2021 where she advised SF that Mr. Gill had not shown GS the Punjabi Consent document.
75. On cross examination HG was questioned about the March 25, 2021 and April 21, 2021 emails and using the cell phone of GS. It was submitted to HG that these emails were written in a manner to suggest that HG had personally been in the office when the Authorization was signed, and that Mr. Gill did not allow “us to read the paper”. HG answered this line of questioning by saying, “Yes, sir, then my brother told me everything that day. I explained that situation. Yes, I was not there. I am telling everything on 25th, sir, when my brother told me, I was asking him about that paper, right. I was just explain about that paper”.
76. Mr. Gill denies trying to convince GS, or any other parties, to change or withdraw the statement that GS had given to the LSA.

#### *WhatsApp*

77. On cross examination GS was questioned about his use of WhatsApp:
  - (a) GS stated that he had been using WhatsApp since about 2016 and in evidence were WhatsApp messages from GS, redacted accordingly, which read in part as follows:

[2020-07-03, 11:09:15 AM] GS New: Messages and calls are end-to-end encrypted. No one outside of this chat, not even WhatsApp, can read or listen to them.  
[2020-07-03, 11:09:15 AM] GS New: GS.  
[2020-07-24, 5:10:34 PM] GS New: Could you please send me the list of documents which you need for my wife’s file  
[2020-07-25, 11:57:17 PM] Gurpreet Gill: Yes by tomorrow 11:00 am
  - (b) On re-direct, when asked about the WhatsApp messages being in English, GS answered that it was his wife who drafted the messages.
  - (c) When asked about one of the advantages of WhatsApp, namely that it is has an “end-to-end encryption” feature, GS replied that he did not “know about that.”

*English Language*

78. GS was also cross examined about his ability to read and write English and, in particular, GS provided the following evidence:
- (a) That he took English studies in India where he took the International English Language Testing System (IELTS) exam.
  - (b) GS's schooling was in the Punjabi language.
  - (c) In addition to using WhatsApp, GS uses English on Facebook and Instagram.
  - (d) GS usually emails in Punjabi.
  - (e) All oral communications with Mr. Gill were in Punjabi and any English documents would be translated by Mr. Gill into Punjabi.
  - (f) GS stated that he has an Alberta Class 1 driver's license. At the time that GS obtained his license in 2017 it was a "very easy process" where he had to register, take a learner's test, complete training in a yard (which was at a Punjabi school) and then do a Class 1 exam and a road test. There was no in-class training. This process changed in 2021 when a new program was initiated.
  - (g) In specific answer to questions about learning the *Traffic Safety Act*, air brake training and training in Alberta traffic laws, GS indicated that all of "these things were told to us when I completed the training in the yard." There was a licensing exam, in English, which GS indicated included "quite a few questions about the signs on the road" and "there were questions about the speed of the highway, the distance we should maintain from the other vehicle when you're travelling." GS stated that he had to take the air brake and Class 1 knowledge test four times before passing due to his English limitations.
  - (h) GS was questioned about his familiarity with Bills of Lading and the Conditions of Carriage Regulation, to which he replied, "I don't know about this." On further cross examination GS acknowledged that he was required to complete driving logs which show hours driven. GS also admitted to being familiar with the Vehicle Inspection Regulation, which like all the other documents was in English. In evidence was a document titled "Mandatory Entry-Level Training, Commercial Truck Driver Training Course: Class 1 September 2022" that listed of all of the regulations under the *Traffic Safety Act*.

- (i) On cross examination it was suggested to GS that he was fluent enough in English to understand the Authorization form to which GS replied: “No, I am not so fluent in English that I can understand completely what was written.”
  - (j) On February 24, 2021 and on February 26, 2021 SF, an investigator with the LSA, sent emails to GS. On cross examination GS says he never received either of these emails.
79. HG gave evidence that she helped GS with reading the questions for the driver’s learner’s test.
80. Mr. Gill testified that GS’s English is “very good” and above average. Mr. Gill further stated that emails between Mr. Gill and the Crown were printed in English and GS would take them home for review. GS never expressed any difficulty with GS understanding the emails. Mr. Gill testified that GS scored 4.5 on the IELTS back in 2016, which score would grant you entry into an English-speaking university in Canada. Mr. Gill testified that he communicated with GS in both English and Punjabi and that the two of them texted many times in English.

*Mr. Gill’s Nephew*

81. Mr. Gill gave evidence that his nephew, MT, had been working for him as a legal assistant until January 14, 2021. According to Mr. Gill, MT had been accepting direct e-transfers from clients, and he had forged T4s to say that MT had earnings of \$360,000.00 so that MT could secure a mortgage of \$1.4 million. When Mr. Gill confronted his nephew, he became the “death enemy” of Mr. Gill.
82. Mr. Gill asserts that MT, who was good friends with the family of GS, had approached the family saying that money can be extorted from Mr. Gill if they will change the statements given to the LSA. GS and HG both denied knowing MT, but Mr. Gill refutes the assertion by GS and HG that they did not know MT.

**Citation 4**

83. Citation 4 stated that Mr. Gill failed to reply promptly and completely to communications from the LSA.

*Evidence of CB*

84. CB is Conduct Counsel with the LSA and in this role, CB was responsible for investigating the allegations and preparing an investigation report. On February 3, 2022 CB sent correspondence to Mr. Gill, enclosing the investigation report regarding the SM matter (citation 1), and seeking his written response to that report. Mr. Gill and his counsel sought extensions of time on 16 occasions between February and October of

2022, and on 15 of those occasions CB granted the extension requests. The last extension due date was October 30, 2022.

85. On October 30, 2022 Mr. Gill sent an email to CB stating: "I am requesting extension for my response which was due today. I am seeking extension till November 30 to file my response as I am struggling with my health and some other issues. This extension will give me enough time to file my response." On October 31, 2022 Mr. Gill emailed seeking an extension until November 15, 2022 and CB replied: "I will be making my decision in the normal course. I will not delay this process, if the response is received before my decision is provided, it will be considered."
86. On October 31, 2022 CB advised Mr. Gill by letter that the initial review of the matter had been completed and that the matter will be moving forward to a Conduct Committee Panel. Mr. Gill provided his written response to CB on November 11, 2022 and the matter was heard by a Conduct Committee Panel on December 13, 2022.
87. On cross examination CB confirmed that the response from Mr. Gill dated November 11, 2022 was not provided to the Conduct Committee Panel. CB testified that she did not feel that there was anything in the response letter that was relevant and nothing in the letter that changed the opinion of CB.

#### *Evidence of Mr. Gill*

88. Mr. Gill testified that due to a bad car accident, he was experiencing medical issues and that this was the principal reason for his extension requests, including the October 30, 2022 request. Furthermore, Mr. Gill's general account was under the custodian's control and as such, Mr. Gill had limited funds to retain a lawyer which was delaying his ability to respond.

#### **Citations 5 and 6**

89. Citation 5 related to a failure to comply with Rule 119.27 when undisbursable trust money were not handled properly. Citation 6 stated that Mr. Gill failed to comply with the Rules that set out the requirements for client identification and verification.
90. Evidence was given by SJ, who is employed by the LSA as an Audit Supervisor with the Trust Safety department and is a Certified Public Accountant and a member of the Association of Certified Fraud Examiners. During the testimony of SJ, he advised that the use of sampling is an international standard since it is not practical or possible to review all transactions. Further, random sampling is generally representative of the complete population.
91. On the issue of undisbursed trust monies, SJ noted that since lawyers are exempt from the reporting requirements under the *Proceeds of Crime (Money Laundering) and*

*Terrorist Financing Act* that practicing “effective client due diligence helps professionals identify red flags and protect them from unwillingly getting involved in illegal activity that could undermine public trust.” SJ also stated that the issue of inactive files is considered a high risk by the LSA since it the principal source of employee theft, misappropriation and fraud.

#### *September 13, 2019 Audit*

92. SJ testified that there was an initial audit done on September 13, 2019 of the financial and other records, accounts and trust funds maintained by Mr. Gill’s law firm. Mr. Gill was the designated Responsible Lawyer for his firm. This audit raised issues about the following:
  - (a) Non-compliant client identification and verification forms; and
  - (b) Undisbursed trust money.
93. In the case of the September 13, 2019 audit, Mr. Gill, as the Responsible Lawyer, signed an observation acceptance form confirming that the lawyer understands what is required of him to remedy any issues raised in the audit. On December 3, 2019 Mr. Gill signed a remedial action plan which set out a process that Mr. Gill was to adopt to remediate the observations noted in the audit.
94. The September 13, 2019 audit report found issues with non-compliance client identification and verification and, in particular:
  - (a) In one of the 15 (6%) sampled client files for individuals, there was no phone number obtained and recorded within the file.
  - (b) In 13 of the 15 (86%) sampled client files for individuals, the occupation of the client had not been obtained and recorded within the file.
  - (c) In 12 of the 15 (80%) of sampled client files for organizations, the type of business or activity was not obtained and recorded within the file.
95. The September 13, 2019 audit recommended that an “identification and verification process be established and consistently performed by the lawyer for all clients.” In response to the audit concerns about client identification and verification, Mr. Gill sent a “Corrective Plan” to the LSA on December 3, 2019 where he stated:
  - We have modified our client information form to include type of organization or business the client is a corporation or organization.
  - We now ensure that the client’s occupation is filled out on this form.

96. The issue of undisbursable trust funds arose during the September 13, 2019 audit where the audit report found the following:
- (a) Four inactive matters totaling \$187.00 were noted for funds lying in trust for more than two years which have not been disbursed to the clients. These funds are considered undisbursable and have not been remitted to the LSA.
  - (b) Two stale dated cheques, totaling \$401.23 were noted for funds lying in trust for more than two years which have not been disbursed to the clients. The lawyer was not able to provide evidence of the effort made to return the funds to the clients.
  - (c) On the Corrective Plan submitted by Mr. Gill to the LSA on December 3, 2019 he stated under the heading of "undisbursable trust money":
    - Review trust listing on a monthly basis.
    - We will diarize the files that have funds in trust, so they do not get forgotten.
    - Contact clients that have had cheques for a long period of time. If they have lost the cheque or it is stale dated, we do not issue a new cheque until we have put a stop payment on it, and we will continue to do this going forward.
    - After contacting the clients, and if the matter is over a two-year period, then the funds will be remitted to the LSA by filling in the applicable form.

*July 5, 2021 Audit*

97. A follow-up audit was done by the LSA on July 5, 2021 and like the 2019 audit, the July 5, 2021 audit raised the following issues:
- (a) Non-compliant client identification and verification forms; and
  - (b) Undisbursed trust money.
98. SJ testified that this audit report noted that in seven out of eight (87.5%) client identification forms sampled the client's business address and business phone number had not been obtained and recorded. SJ testified that this was a similar observation that was noted in the 2019 audit; that Mr. Gill had failed to follow through with the Corrective Plan.
99. On cross examination SJ was directed to the client identification form of GS, where the address and telephone number of the client had not been completed. SJ was asked if it would not be likely that a criminal client, such as GS, would not want to be contacted at his place of employment. SJ replied that the client information form is not completed with an objective that the lawyer would need to call the work number, and that if a client is not to be contacted at work that this can be noted on the client identification form. SJ stated

that Rule 118.3 provides that a client's workplace information is only to be entered where applicable, but if a client is employed, then there is a workplace, and an address and telephone number needs to be entered. SJ testified that all the required details on a client identification form must be filled out or completed.

100. SJ pointed out that the July 5, 2021 audit noted the following issues with respect to undisbursable trust money:
  - (a) 303 inactive matters totaling \$242,673.84 were noted for funds in trust for more than two years, which have not been disbursed to clients, of which about 240 dated back to 2014.
  - (b) 145 outstanding cheques totaling \$28,986.38 were identified as being stale dated. (It was noted by SJ that there was some overlap between these stale dated cheques and the 303 inactive matters).
  - (c) Only 127 outstanding cheques totaling \$19,015.68 were reported in the law firm's 2020 Self Report.
  - (d) The lawyer was not able to provide documented evidence of the efforts made to return the funds to the clients.
101. SJ testified that the number of inactive matters "had spiraled out of control, as there was no regular review of inactive files." Further, SJ noted that in 2019 there were four inactive matters and two stale dated cheques, while in 2021 there were close to 300 inactive matters and about 145 matters with outstanding cheques. SJ noted that there were no efforts to reach out to clients respecting the stale dated cheques and no evidence of efforts made to return the funds to the clients. According to SJ, Mr. Gill had failed to regularly identify inactive files and to "work on moving those funds or disbursing those funds to the clients to whom these funds belonged to."
102. As part of his reply to the LSA on September 17, 2021, Mr. Gill provided a Log of Attempts to Disburse Outstanding Funds (Log Attempts). The issue raised by SJ in his review of the Log Attempts spreadsheet is that there are not three unique attempts to contact a client. Many of the attempts were telephone calls, but no other types of attempts were made. Furthermore, for the 145 stale dated cheques, Mr. Gill showed no effort at contacting the clients. SJ stated that between the audit reports of 2019 and 2021 Mr. Gill submitted no trust funds or forms to the LSA.
103. SJ also stated that the 84 of the 195 rows of the Log Attempts spreadsheet were blank, showing no attempts to contact the client. On the rows where an attempt had been made, there was rarely more than one type of attempt, such as a telephone call.



104. On the issue of trying to locate clients, SJ testified that there is a resource guide on the LSA website which discusses ways to locate individual clients such as using social media, e-mails, correspondence and speaking with others that might have client information. SJ testified that from a “guidance perspective we say there should be at least three types of unique attempts” to contact clients.
105. During cross examination SJ was referred to the Log Attempts and in particular, SJ was referred to a specific instance where Mr. Gill (or someone on his behalf) spoke to the client in July 2020 and they again spoke to the client in January 2021 and that this was a situation where the client was located, but did not want to attend in person at the office due to Covid.
106. On cross examination SJ confirmed that the self-reports from Mr. Gill were due December 31, 2020, while the audit report of July 5, 2021 covered the period of time from March 1, 2020 to March 4, 2021. This accounts for the discrepancy between cheques outstanding from January 1, 2021 to March 4, 2021 in comparison to the amount on the self-report of December 31, 2020. Cheques issued in the period between January 1, 2021 and March 4, 2021 were not reportable in the 2020 self-report from Mr. Gill since they had not been issued.
107. SJ confirmed that a custodian took over the files of Mr. Gill on June 25, 2021, and as of January 31, 2024 the appointed custodian had not reconciled all the trust accounts, disbursed the trust funds and closed the accounts. It was pointed out by SJ that the files date back to 2009, 2010 and 2013. SJ also confirmed that there were no trust shortages and no funds missing as of the date of the audit of March 4, 2021.
108. Mr. Gill stated in his evidence that he was not having trouble locating clients, but the issue was that these people were not comfortable, given the small amounts, with attending in-person to the office. These people did not even want a cheque because of the possibility of transmitting the COVID virus through mail.
109. Mr. Gill also testified that there was no issue in attributing trust money to any particular client because all clients were identifiable.
110. Regarding the 188 files which were holdbacks, Mr. Gill stated that the LSA auditors were given complete access to the accounting software. Mr. Gill testified that in one year he had some \$200 million go through his trust account and at no time were any trust funds unaccounted for or missing.
111. On cross examination Mr. Gill agreed that the number of matters with undisbursable trust monies in 2019, which was a total of four inactive matters, had increased in 2021 to 303 inactive matters. Despite this, Mr. Gill did not accept the findings in the 2021 audit report because “there were a lot of discrepancies” and in particular, Mr. Gill did not agree with the report in respect of client identification and verification and undisbursable trust

funds. Mr. Gill had advised the LSA that he was in the process of improving a practice management and client identification system but had not done so because he wanted to respond to the audit.

112. On September 17, 2021, some three months post custodianship, Mr. Gill did provide a written response to the LSA in respect of the July 5, 2021 audit, which included the following explanations in respect of undisbursable trust funds:
- (a) "COVID restrictions significantly impeded our efforts to return funds to the client during the pandemic."
  - (b) "Upon receiving the 2019 audit report a list was generated from the accounting software program of outstanding trust balances."
  - (c) Mr. Gill maintained an undated spreadsheet for the purpose of tracking efforts to locate clients, "including phones calls and some house visits." Mr. Gill's son made numerous attempts to contact the clients on this list including calling everyone over about three weeks in July 2020 and January 2020 and then again in January 2021.
  - (d) "...faced many obstacles in our efforts to return these funds including that we did not have email addresses for many of the individuals. Many were elderly and did not use email and preferred to do things in person." Some clients preferred to meet in-person. Mr. Gill's son did do some house visits, but with minimal success.
  - (e) Included with this letter was a colour coded spreadsheet that listed all of the files with undisbursable trust funds and the explanation for each along with a Log of Attempts to Disburse Outstanding Funds showing all attempts made to contact clients.
  - (f) Many of the amounts were small and clients did not want to attend in-person at the office due to the COVID pandemic to retrieve cheques. At least 74 of the outstanding matters were amounts less than \$100.00.
  - (g) Regarding stale dated cheques, Mr. Gill did not want to send out a replacement trust cheque until addresses could be confirmed.
  - (h) On many of the real estate files, monies were being held back in trust pending certain conditions and the majority of the undisbursable trust monies identified related to these holdbacks.
  - (i) Of the 230 categorized as undisbursed funds, approximately 188 were holdbacks.

- (j) The LSA indicated that there were 145 stale dated cheques totaling \$28,986.38, but Mr. Gill's self-report showed 127 stale dated cheques totaling \$19,015.68. Mr. Gill requested access to the custodian's files so that he could specifically address this discrepancy.

## **Citation 8**

113. Citation 8 alleges that Mr. Gill sexually harassed an employee, BW.

### *Evidence of BW*

- 114. The Committee heard from BW who testified that as part of her university degree program she was required to do a 100-hour internship in criminal justice, which was being done with Mr. Gill's firm. BW started May 30, 2016 and she was to complete her 100 hours on June 15, 2016. BW was 19 years old at this time.
- 115. From the first day of work, BW began to grow very uncomfortable with the behaviour of Mr. Gill and in particular, BW gave evidence as follows:
  - (a) Over the first two weeks of the internship Mr. Gill would take BW in his vehicle to the courthouse or to a client's home. During these trips Mr. Gill would converse with BW about how he was in an arranged marriage, that he never loved his wife and that he no longer wished to be with his wife.
  - (b) Mr. Gill was also "extremely complimentary" about BW "to the point of any little thing I did, if I read an article, he would compliment me about how brilliant I was and smart, and exceptional, even though what I was doing was not exceptional."
  - (c) Mr. Gill, on one occasion, took BW for lunch even though she had asked to go back to the office. Mr. Gill said "no, you can do that later." These unwanted lunch dates happened on more than one occasion. During the course of these meals Mr. Gill would often insist on alcoholic drinks for both BW and Mr. Gill.
  - (d) At the end of the first week Mr. Gill gave BW his credit card and told her to buy herself a "Michael Kors purse", with a value of about \$300 to \$500, as a reward for all of her hard effort. Mr. Gill asked her to wear it to the office for him to see.
  - (e) Mr. Gill would text BW and tell her that her smile was "pure", and he would refer to BW as "goddess". Mr. Gill would also text BW good morning and good night and text her in the evenings after hours.
- 116. All of these actions made BW very uncomfortable to the point where she would make every possible excuse so as to not be left alone with Mr. Gill.

117. BW testified that matters came to an unsatisfactory end on Friday, June 10, 2016. Following a successful court application Mr. Gill wanted to celebrate with the staff. Mr. Gill, together with BW, an articling student and Mr. Gill's nephew, went to Earls Restaurant. At the restaurant alcohol was being served to everyone. At one point Mr. Gill left to go to the bathroom where he proceeded to start texting Ms. Gill:

Gill "Thanks for ur help to [nephew]  
But I brought a surprize which will match ur black dress  
And please don't say no  
Because I treat us as GODDESS OF TRUST AND RATIONALITY"

BW Oh lord

Gill PLEASE  
LORD BLESS US ALL..AMEN

BW U have already paid me fair

Gill WE R CONNECTED IN A SPECIAL WAY THRU LORD JESUS  
UR PRICELESS  
No price can be allocated to u  
I would have perished without u

BW I think you have had to much to drink!

Gill No..it is true and honest expression  
Truth is JESUS  
I Don't PLAY games  
My life is very simple and pure like your smile  
U r pure like anything  
It is difficult to find person like u  
Anyways..AMEN AS I TRUST LORD JESUS  
I think I will perish without u  
U contributed a lot out office  
Rationality and HR PRACTICE  
PLEASE Don't FEEL BAD  
AS U WORKED REALLY HARD TO BRING PUNTUALITY [sic] TO STAFF  
PLEASE DONT FEEL BAD  
AS I AM SOFT ON HR POLICIES  
AND U PEOPLE INCLUDING U R FIRM  
AND U RIGH AND I AM WRONG  
AS WORK ETHICS R UNIVERSAL AND MUST BE UNIVERSAL

BW Stop texting me please

Gill Ok  
I won't at all  
But thanks for ur HR HELP  
AMEN

This black dress gift was from [nephew] which he brought especially for u as he find (sic) u very helpful in preparation and his integration into Canada  
He thinks u r gem of a person and likes u r a person  
I apologize if I ever hurt ur feelings as I don't believe in hurting anyone as I BELIEVE IN KARMA.  
And immensely thanks for ur hard work!  
Especially [S] is very happy and said special thanks to u!

118. The text messages made BW “extremely uncomfortable” and the reference to the black dress gave BW “goosebumps”. BW testified that she found the statement that Mr. Gill would “die without her” akin to something a “scorned lover” would say. BW asked him to stop at which point BW began crying and asked the articling student to get her out of the restaurant. BW left before Mr. Gill came back from the bathroom. BW went back to the office, packed up her belongings and left. She never returned to Mr. Gill’s office, even though her internship was not to conclude until June 15, 2016.
119. BW testified that on the next morning of Saturday, June 11, 2016 she received an email from Mr. Gill where he apologized to BW and he specifically stated, in part: “I was told by [nephew] that yesterday at Earls you became upset. I was surprised but first apologize unconditionally that if happened due to any of us”. After praising BW for her hard work and excellent job performance. Mr. Gill went on to state:

I realized that I should not have texted you about [nephew] gift but he was shy enough to offer and asked me to give it to u. He brought a black silk neck scarf and this silk is unique to India. However he wanted to gift to you just as gesture of respect. Even [client] offered you free manicure and Pedicure and that was also gesture of special respect towards u. This is cultural issue and in Canada it might have different meanings to which I am not aware.

Anyways I am sorry once again if any action/s (which I have no clue) of mine brought u uncomfortableness as I am strong believer of individual respect and dignity towards my TEAM and I am very sensitive to such issues.

120. BW testified that she needed a reference letter to complete her internship. Late on the afternoon of June 11, 2016, BW sent Mr. Gill a text message stating that June 10, 2016 was her last day of work and she said: “I want to again thank you and the firm for giving me the opportunity to intern.” In that text message BW outlined what work she had done and which she wanted Mr. Gill to use for the reference letter. BW concludes in that email saying: “Thanks again for the opportunity. I wish you and your firm all the best.” That same day Mr. Gill texted BW regarding the reference letter and asked BW to send him a work reference letter and he would incorporate his remarks.
121. BW stated that she was trying to “break into the legal” field and she sent the thank-you e-mail hoping for a positive reference letter that might help with law school admission. When asked under cross examination if she was pretending to be appreciative, BW

replied that she was “thankful for the opportunity, but not the experience, and – but I just wanted it to be over, and I figured being civil in that email would be the best way for things to just end as quick as possible”. BW confirmed that she had no memory of any inappropriate physical contact by Mr. Gill.

122. In a text message on June 14, 2016, Mr. Gill advises that the reference letter, along with a “small gift and good luck card” will be couriered out to BW. In a response text BW does say “thank you”. BW, who is now a practicing lawyer, testified that if this had happened to her at this later point in her life she would not have responded.
123. BW testified that she found it very strange that instead of emailing the reference letter, Mr. Gill sent it via courier to her house along with a card and gift. BW stated that she had her mother answer the door while BW sat behind the staircase because she “didn’t want any further interaction at all” and she did not know who was actually delivering the reference letter. Included with the reference letter was a Guess purse.
124. Over the next four years BW advised that she continued to receive emails from Mr. Gill, but she did not respond.
125. Under cross examination, BW explained that she did not file a complaint with the LSA following the events in May and June of 2016 because she was concerned about possible backlash. In 2022 BW was contacted by an LSA investigator who had possibly obtained BW’s name from either Mr. Gill’s nephew, or from other women who may have filed complaints. The investigator, during his interview of BW, had other aspects of the investigation by indicating that there were other possible complainants.

#### *Evidence of Mr. Gill*

126. Mr. Gill denies sexually harassing BW, but he does “regret” sending the text messages to BW and he did apologize to her in his e-mail on June 11, 2016. Mr. Gill stated that he had too much to drink and he did not “know what world he was in” when he sent the texts. Mr. Gill testified that he had been drinking excessively at the restaurant, but that alcohol was not an issue. Mr. Gill had been up since about 2:00 a.m. on June 10, 2016 preparing for an immigration hearing such that he was over-tired and drank more than he could handle.
127. Following the apology letter of June 11, 2016 Mr. Gill continued to communicate with BW about providing a reference letter and the contents of the letter.
128. On cross-examination Mr. Gill stated that every Friday the staff is offered a free lunch, and they can have one complimentary alcoholic drink from a small bar in the office kitchen. Mr. Gill did admit to taking BW for lunch at the Hotel MacDonald.

129. Regarding the events at the Earls Restaurant, Mr. Gill, on cross, stated that he was drunk and could not recollect whether he was in the restaurant bathroom when he started sending the text messages. In respect of the comment, “My life is very simple and pure like your smile”, Mr. Gill’s evidence was that it is “good to compliment people” and it is part of his culture to do so.
130. In response to the statements, “I will perish without you”, Mr. Gill stated on cross examination that BW had done a “great job” in respect of the Human Resources issues at his firm.

### **Citation 9**

131. Citation 9 alleges that Mr. Gill sexually harassed an employee, TN
132. Mr. Gill’s evidence was that TN worked for him as a legal assistant from May 2019 until the first week of September 2019. TN testified that she was briefly employed by Mr. Gill between July and September of 2019 as a legal assistant.
133. TN testified that she had a desk in a meeting room, where Mr. Gill would interview clients. TN gave evidence that she felt that Mr. Gill “tried to be very close, both physically and many times verbally as well.” There were instances where Mr. Gill and TN would be sitting close enough that TN could feel Mr. Gill’s legs touching her legs. TN stated that Mr. Gill was always sitting close to her and that Mr. Gill’s knees would “constantly” touch against TN’s legs.
134. Mr. Gill stated that TN did not want to sit next to and shadow another employee. Mr. Gill suggested that TN could sit in the conference room and use the computer and a small table. Mr. Gill disputes that their legs touched since they were seated opposite each other at the conference room table.
135. TN also testified that following a client interview regarding a sexual assault matter, Mr. Gill proceeded to give “very specific details about what was going on in the file, more so the sexual graphic stuff of it where – the language of which was – he was delivering the details was not very professional or comfortable.” Mr. Gill denies using inappropriate or unprofessional language when discussing the sexual assault case.
136. TN advised Mr. Gill that she had passed her immigration consultant exam and in response Mr. Gill proceeded to “hug” her. TN was taken back and she had to “pull herself out of the hug”. The next day, or a couple of days later, TN told Mr. Gill that she was moving to Toronto, which was not in fact true. TN stated that she did not want to continue working with Mr. Gill and she did not want him to know that she was still living in Edmonton. Regarding the allegation of a hug, Mr. Gill stated under cross examination that no hug took place because TN was a person of “conservative values”.

137. TN also stated that there were times that she “could feel” Mr. Gill staring down her shirt. Mr. Gill denies this allegation.
138. Mr. Gill denies sexually harassing TN.
139. Under cross examination TN confirmed that she did not initiate the complaint with the LSA. TN believes that her name was provided to the LSA by MT, Mr. Gill’s nephew.

## **Legal Issues and Analysis**

### *Standard of Proof*

140. Counsel for Mr. Gill argues that the standard of proof in civil cases is always on a balance of probabilities, but that the evidence must be sufficiently clear, concise and cogent to satisfy the balance of probability test. Counsel references paragraph 46 of the Supreme Court of Canada Case of *F.H. v. McDougall*, [2008] 3 SCR 41:

Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

141. Mr. Gill’s counsel asserts that in a number of citations this Committee will have to grapple with whether there was sufficient, clear, convincing and cogent evidence.
142. The Committee concurs with the proposition that the standard of proof is on a balance of probabilities and that such evidence must be sufficiently clear, concise and cogent to satisfy the balance of probability test.

### *Similar Fact Evidence*

143. Counsel for Mr. Gill also notes the rule against admitting similar fact evidence is such that evidence is generally inadmissible to suggest that the occurrence of a second or third incident is more likely to suggest that “where there is smoke there must be fire.” In order to be admissible, to support each other, evidence of separate citations must be so strikingly similar in the characteristics of the citations as to leave no option but to admit the evidence. In this case counsel argues that there is no striking similarity between or amongst the three sexual harassment citations and that each must be proven on a



balance of probabilities on the basis of clear, convincing and cogent evidence, on its own merits.

144. This Committee is not bound by the common law rules of evidence that apply in court proceedings and this Committee has discretion to admit evidence in any manner that it considers proper in accordance with section 68 of the *Act* and Rule 90.8. However, in this particular case the Committee is prepared to treat each allegation of sexual harassment separately and without considering them as similar fact evidence. The Committee agrees with Mr. Gill that there are no striking similarities between the citations, and it sees no reasonable basis for a finding of guilt on one citation as being evidence or the basis of guilt on any other citation.

### *Credibility*

145. Witness credibility can often be a challenging aspect for any trier of fact and the factors to consider have been well documented by our Courts. Judging a witness's credibility is not a scientific process and is usually the product of several considerations. The starting point in assessing credibility is set out in the Supreme Court of Canada decision of *R. v. White*, 1947 CanLII, 1, [1947] S.C.R. 268 (SCC) at paragraph 272:

The issue of credibility is one of fact and cannot be determined by following a set of rules that it is suggested have the force of law and, in so far as the language of Mr. Justice Beck may be so construed, it cannot be supported upon the authorities. Anglin J. (later Chief Justice) in speaking of credibility stated:

by that I understand not merely the appreciation of the witnesses' desire to be truthful but also of their opportunities of knowledge and powers of observation, judgment and memory — in a word, the trustworthiness of their testimony, which may have depended very largely on their demeanour in the witness box and their manner in giving evidence. *Reymond v. Township of Bosanquet* [(1919), 1919 CanLII 11 (SCC), 59 Can SCR 452 at 460].

... It is a matter in which so many human characteristics, both the strong and the weak, must be taken into consideration. The general integrity and intelligence of the witness, his power to observe, his capacity to remember and his accuracy in statement are important. It is also important to determine whether he is honestly endeavouring to tell the truth, whether he is sincere and frank or whether he is biased, reticent and evasive. All these questions and others may be answered from the observation of the witness' general conduct and demeanour in determining the question of credibility.

146. We would lastly refer to the decision in *Sylvan Lake Golf and Tennis Club Ltd. v. Performance Industries Ltd. and O'Connor*, 1996 CanLII 19877 (ABKB)<sup>1</sup>, where the court stated at paragraph 27:

The tests for assessing credibility in this court are well established and may be summarized as follows:

1. The witness's evidence should first be considered on a "stand-alone" basis. In this regard, factors such as firmness, memory, accuracy, evasiveness, and whether the witness's story is inherently believable.
2. If the witness's evidence survives the first test above, the assessment moves on to a comparison of that witness's evidence with the evidence of others and documentary evidence.
3. Finally, the court must determine which version of events, if conflicting versions exist, is most consistent with "the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

### *Sexual Harassment*

147. The LSA Code of Conduct (Code) contains the following on sexual harassment:

6.3-3 A lawyer must not sexually harass a colleague, employee or any other person.

#### Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

148. The Supreme Court of Canada in the leading case of *Janzen v Platy Enterprises Ltd.*, [1989] 1 SCR 1252 (*Janzen*) at paragraph 1284 offered the following definition of sexual harassment in the workplace:

... sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.

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<sup>1</sup> This decision was reversed on appeal on unrelated reasons dealing with apprehension of bias.

149. This statement can be summarized as a tripartite test for workplace sexual harassment:

- 1) The conduct must be sexual in nature;
- 2) The conduct must be unwelcome;
- 3) The conduct must detrimentally affect the relevant environment or lead to an adverse consequence.

150. The Committee also considered the definition of sexual harassment as provided by the Alberta Human Rights Commission:

Harassment is unwanted or unwelcome verbal or physical conduct that offends or humiliates a person. It may be one serious incident or a series of incidents. Sometimes, harassment is called bullying. Sexual harassment is a form of harassment that is sexual in nature.

#### *Non-Party Complainants*

151. Mr. Gill raised concerns about the fact that neither BW (citation 8) or TN (citation 9) filed complaints with the LSA. The LSA investigator, SF, gave evidence that another LSA investigator, GJ, was dealing with an investigation involving Mr. Gill's nephew, MT, and that MT had offered information about Mr. Gill. In effect the BW and TN complaints arose from MT, who was providing information to the LSA about his uncle at the same time as MT was being investigated by the LSA.

152. Where the LSA becomes aware that a lawyer may have engaged in misconduct the LSA has an obligation to investigate that conduct. If the allegations of misconduct are confirmed by a potential complainant, then the LSA has an obligation to bring the matter before this Committee and we will be charged with determining the merits of the complaints. MT may well have been motivated for personal reasons to advise the LSA about both BW and TN, but that does not relate to the merits of the complaint.

### **Analysis and Decision**

#### Analysis: Citation 1

#### *Arguments of LSA*

153. Counsel for the LSA argued that during the interviews Mr. Gill asked inappropriate questions about age and marital status. SM was shocked, felt panicked and was traumatized by the Videos. Mr. Gill's suggestion that he was engaging in "out of the box thinking" was misguided.

154. LSA counsel further argues that an adverse inference should be drawn since Mr. Gill failed to call the assistant which Mr. Gill said was present at the interview but did not give evidence at this Hearing.
155. On the issue of a legal definition of sexual harassment LSA counsel references the leading case of *Janzen* as establishing the tripartite test as described herein at paragraph 149. LSA counsel submits that the conduct of Mr. Gill meets all the elements of the tri-partite test. Counsel further argues that Mr. Gill breached the *Alberta Human Rights Act* by virtue of Mr. Gill asking SM discriminatory questions based on her gender, marital and family status.

*Arguments of Mr. Gill*

156. Counsel for Mr. Gill agrees that the evidence in respect of SM is largely uncontroversial, but that the effective issue is whether or not the sharing of the Videos with SM constitutes “sexual” harassment. Mr. Gill’s counsel starts with paragraph 19 of the Code, which points out that harassment is an element of Canadian Human Rights law.
157. Counsel references a handout from the Alberta Human Rights Commission which applies a general definition of harassment as being “unwanted or unwelcome verbal or physical conduct”. Mr. Gill’s counsel argues that applying this definition would appear to dispose of the complaint by SM and in particular:
- (a) Mr. Gill’s pre-employment questions were not well expressed, but Mr. Gill provided a valid explanation as to why he would want an assistant who is physically fit to carry boxes or files.
  - (b) Mr. Gill acknowledges that asking an applicant about their marital status or relationship status is contrary to proper human resources processes.
158. As regards the Videos, counsel for Mr. Gill states that his client admits that he should have done things differently and repeats the evidence of Mr. Gill as follows:
- Q: So it was inappropriate to send the videos?
- A: I would say I shouldn’t have sent it, and that’s what I said you know. That’s the whole purpose of screw up. It was out-of-the box thinking which was not a good thinking.
159. On the issue of whether there was sexual harassment, counsel for Mr. Gill argues that the Committee needs to consider that there was no physical contact whatsoever between Mr. Gill and SM since they had never met. Furthermore, it is argued that it is understandable that employees in a law office may, as part of their employment duties, come into contact with offensive images.

## Analysis

160. The evidence is unrefuted that the Videos contained sexually explicit material. Aside from that, there are notable differences and conflicts between the evidence of SM and Mr. Gill:
- (a) Mr. Gill said he told SM that he would be sending her videos that “might contain some obscene/private contents” and an RCMP letter. SM testified that nothing was discussed about any videos or their contents, or about the explicit nature of the Videos (or any videos).
  - (b) Mr. Gill stated that he read out a disclaimer to SM during the telephone interview which was to the effect that SM was to keep any WhatsApp videos from Mr. Gill’s law firm strictly confidential. SM’s evidence was that nothing was said that the videos were confidential.
  - (c) Mr. Gill advised that he told SM that he wanted her to translate from Punjabi to English. SM’s evidence was that at no time did Mr. Gill indicate that he wanted SM to translate videos from either English to Punjabi or vice versa.
161. The Committee finds that where a conflict exists between Mr. Gill’s evidence and that of SM, we find the evidence of SM more reliable and credible. In assessing credibility, the Committee has considered the evidence of SM and Mr. Gill on a standalone basis, bearing in mind such factors as memory, accuracy, evasiveness, interest in the proceedings and whether the witness’s story is inherently believable. In making this determination of credibility, the Committee has considered the following:
- (a) SM was clearly shocked by the Videos, suggesting she had no notion as to what the Videos contained. The Videos left SM shaken and traumatized, and she was clearly distressed by the Videos. The stress experienced by SM and her reaction to the Videos was corroborated by her uncle’s evidence. It is clear that SM was not expecting the Videos, and she was certainly taken back and shocked by their contents.
  - (b) SM appeared to be making a good faith effort to fully and accurately give evidence and there was nothing which would suggest that she was deliberately lying or failing to disclose relevant information.
  - (c) SM’s recollection and memory of the interviews was consistent. There was nothing to indicate that SM’s memory had been distorted as a result of conversations with others or by the passage of time.
  - (d) SM appeared confident in her testimony and there was nothing in her manner of speech or physical demeanour to suggest that she was not being honest.

- (e) In the email from Mr. Gill, where he forwarded the Videos, he does not make any reference to prior discussions during the interview with SM. In other words, there is nothing in the email from Mr. Gill to suggest that SM should be expecting the Videos.
  - (f) Mr. Gill stated that his HR assistant was present, along with a brief appearance by another student, during the interview with SM, but no corroborating witness was presented.
162. It is not that we necessarily find that Mr. Gill has not been honest in his version of events. There is a distinction to be made between honesty and reliability. We appreciate that Mr. Gill was attempting to engage in “out of the box thinking”, but the sending of the Videos was a misguided and grossly inappropriate action on the part of Mr. Gill.
163. The Committee, applying the *Janzen* tripartite test, finds that Mr. Gill sexually harassed and in particular:
- (a) The Videos were clearly sexual in nature.
  - (b) The Videos were very unwelcome by SM.
  - (c) The Videos had a detrimental impact on the mental and emotional well-being of SM.
164. The intent of Mr. Gill is not determinative of the issue of sexual harassment. Mr. Gill objectively should have known that the forwarding of the Videos would be unwelcome and offensive. While Mr. Gill may not have intended the Videos to be sexually harassing, from an objective point, these videos cannot be construed as anything other than sexual harassment. It is unrefuted that the Videos were sexually explicit and there was not an objectively rational reason for providing those Videos to SM.
165. On the issue of the RCMP letter the Committee cannot reasonably conclude that this was sent with the purpose of intimidating SM.
166. The Committee finds that Mr. Gill sexually harassed a prospective employee, namely SM, and that he is guilty of conduct deserving of sanction on citation 1.

#### Analysis: Citation 2

#### *Arguments of LSA*

167. LSA counsel argues that GS was lied to by Mr. Gill when GS was told that his ex-girlfriend was re-opening the criminal case, and it was on this premise that GS attended at the office of Mr. Gill to sign the Authorization. Mr. Gill met with GS privately, even though GS's wife and sister had also come to the meeting. Counsel for LSA asserts that

the Authorization was signed in February 2021, and not September 2020, that GS did not understand what was being signed and that GS did not consent to the release of the Videos.

168. LSA counsel further submits that the evidence of GS regarding the meeting date of February 14, 2021 was corroborated by his sister, HG. HG also testified that the Authorization was not a document that her brother could create or understand.
169. LSA counsel underscored the importance of the limited ability of GS to understand, write and speak English.
170. Counsel for the LSA also found Mr. Gill's explanation suspect given that the Authorization and the NS English Consent were prepared by two different clients and that these two documents contain identical wording.
171. Counsel noted that Mr. Gill acknowledged that he had a recent criminal conviction for falsely attesting to an affidavit as if it was sworn before him, when it was not. The case in reference is *R v. Gill*, 2023 A.B.C.J. 263.

#### *Arguments of Mr. Gill*

172. The main assertion of Mr. Gill is that he had the written consent of his client, GS, to use the Videos. Furthermore, Mr. Gill's counsel argues that Mr. Gill only disclosed the Videos to SM and to no one else.
173. Counsel for Mr. Gill also calls into question the inability of GS to understand English and counsel notes that GS has been a commercial (Class 1) truck driver in Canada for some 8 years and that it seems improbable that GS would have been unable to read the Authorization, let alone compose same. There was evidence presented by Mr. Gill about the current Class 1 licensing requirements under the *Traffic Safety Act* and several regulations that a holder of this license must be knowledgeable about. The argument being that it would not be possible for someone with limited English to read and understand the myriad of laws that govern the holder of a Class 1 license.
174. Furthermore, Mr. Gill's counsel argues that GS received a passing grade of 4.5 on the IELTS, which is a score sufficient to obtain university entry in Alberta for English language proficiency. Mr. Gill's counsel refers to the cases of *Safdar v. Canada (Citizenship and Immigration)*, 2022 FC 189 and *Sandhu v. Canada (Citizenship and Immigration)*, 2022 FC 301 for the proposition that IELTS test results are recognized as a measure of English proficiency under Canadian law.
175. It was also noted by Mr. Gill's counsel that GS's sister, HG, was able to compose emails in English about relatively complex legal concepts and that HG typically ended her emails with "thanks".

176. Counsel for Mr. Gill argues that his client was not “convicted” but rather was found “guilty” of falsely attesting to an affidavit and that if a discharge is granted that Mr. Gill will not be found guilty. Furthermore, it is argued that this conviction should not stand as evidence of bad character such that it makes Mr. Gill more likely that he breached client confidentiality.
177. Mr. Gill notes that he has had an unblemished record of legal practice for some 15 years.

### *Analysis*

178. The Code states:

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

(a) Expressly or impliedly authorized by the client ...

179. Mr. Gill argues that GS has a “good” command of the English language based on the fact that GS has been a commercial (Class 1) truck driver in Canada for some 8 years. While the current Class 1 licensing requirements may be stringent, the Committee finds that the licensing requirements in 2017 appear to have been far less rigorous than the current requirements and it is therefore not appropriate to evaluate the English competency of GS based on current licensing standards.
180. Mr. Gill further argues that GS received a passing grade of 4.5 on the IELTS test which would indicate English proficiency. Mr. Gill proffered two cases, *Safdar* and *Sandhu*, for the proposition that IELTS test results are well accepted as a measure of English language proficiency in Canadian law. The Committee does not find these cases helpful.
181. In the *Safdar* case the Applicant challenged the decision of an Immigration Officer that denied a foreign Applicant a work permit. One of the reasons for this denial was that the Applicant lacked sufficient English. As evidence of his English abilities the Applicant had provided to the Officer an IELTS test result of 5.0. The Court found that the Immigration Officer erred in his rejection of the application. The core finding of the Court, at paragraph 18, was the “Officer’s conclusion that, based on the documentation provided, the Applicant did not meet the language requirement is not intelligible or justified” (our emphasis). In support of the application the Applicant had presented other documents in addition to the IELTS test result. Nowhere does the Court take judicial notice of the meaning of an IELTS score or how one might interpret a range of scores.



182. The *Sandhu* case was also an appeal from the decision of an Immigration Officer that denied a work permit to an Applicant seeking work under the Temporary Foreign Worker Program. In this case the Court found the Officer's decision unreasonable. While the Court discusses the IELTS scores of the Applicant in the context of his application for a work permit, the Court does not expressly find that IELTS scores are, for legal purposes, satisfactory evidence of English competency.
183. No evidence was put forward regarding what a score of 4.5 might indicate. A review of the IELTS webpage indicates that scores range from 0 to 9. There was no evidence before the Committee as to what level of proficiency a score of 4.5 would represent since each educational institution or organization sets its own level of IELTS scores to meet its individual requirements. According to Mr. Gill a score of 4.5 would grant entry into an English-speaking university in Canada (which evidence was not corroborated), but that does not assist us in determining the English competency of Mr. Gill.
184. GS's first language is not English, and while there were suggestions by Mr. Gill that GS was fluent in English, there was no evidence to support that conclusion. The evidence would support the conclusion that the English competency of GS was not good and in particular:
- (a) The investigator, SF, was aware from GS's interactions with the police that GS was not fluent in English.
  - (b) GS's evidence was that he took English studies in India where he took the IELTS exam and that his schooling was in the Punjabi language.
  - (c) GS also stated that he uses English on Facebook and Instagram, but that he usually emails in Punjabi.
  - (d) GS's oral communications with Mr. Gill were in Punjabi and any English documents would be translated by Mr. Gill into Punjabi.
  - (e) The Committee is also mindful that a person with some English communication skills may well feel unable or uncomfortable with understanding a legal document such as the Authorization. It may be one thing to speak with family, friends or co-workers in conversational English, it is entirely another matter to properly understand a legal document such as the Authorization.
185. Mr. Gill's version of events is that GS called him on February 12 or 13, 2021 because GS needed information about the criminal stay for a potential employer. GS stated that on February 14, 2021, a Sunday, Mr. Gill called him and advised that the ex-girlfriend was going to "reopen the case". On this point the Committee accepts the evidence of GS for the following reasons:

- (a) The initial complaint by SM was dated December 23, 2020. The LSA sent Mr. Gill a letter on February 3, 2021 advising him of the SM complaint. It would be an unreasonable coincidence that GS would be contacting Mr. Gill on February 12 or 13, 2021 about a prospective employment matter some 9 or 10 days after Mr. Gill receives notice of the SM complaint. The more reasonable conclusion is that Mr. Gill contacted GS to attend at his office on February 14, 2021.
  - (b) It is also reasonable to conclude that GS was told that the ex-girlfriend was going to reopen the case. This evidence about the ex-girlfriend reopening the case is corroborated by the GS's sister, who also attended the office.
186. There is also a dispute about who prepared and created the Authorization, and we again accept the evidence of GS for the following reasons:
- (a) The language in the Punjabi Consent and the Authorization is very different except that the Authorization says, "I unconditionally allow VLG Lawyers to use videos relating to my file for the purposes of staff training, learning, translation, and for their recruiting and staff development purposes" while the Punjabi Consent says, "for our recruiting efforts, staff training and development." Given the complexity of the Authorization, and its difference in wording from the Punjabi Consent, it seems implausible that GS could have created the Authorization form on his own accord. The more reasonable conclusion is that Mr. Gill created the Authorization.
  - (b) There are appreciable similarities between the Authorization and the NS English Consent and, in particular:
    - i. These two documents use the same exact phrase:

For the purposes of staff training, learning, translation, and for their recruiting and staff development purposes.
    - ii. The two documents have the same heading, signature line and the place for the date.
  - (c) Mr. Gill's evidence was that he advises clients that he wants this exact phrase to be in any authorization and that he tells them "broadly how that should be". This explanation does not seem reasonably plausible, and it seems improbable that two unrelated clients of Mr. Gill would produce very similar consents.
  - (d) If it were in fact the case that the criminal charge was being re-opened, it seems reasonable that GS's wife and sister would attend given the gravity of the offence. If GS was only attending to sign the Authorization, it seems unlikely that the wife and sister would tag along.

- (e) No evidence was provided by NS (who was not called as a witness) which would have confirmed that he prepared the NS English Consent.
  - (f) On the Punjabi Consent there is no evident signature of GS, though Mr. Gill says that the signature is cut off. The Punjabi Consent states: “Should you agree (i.e. to providing consent), please send me a consent letter written in English or Punjabi.” It is unreasonable to conclude that GS, when asked to prepare a “consent letter” would have the wherewithal to draft the very formal Authorization.
187. The Committee accepts the evidence of GS that he did not know or understand the nature of the Authorization, that he believed that this Authorization was “just a formality”, that he never saw the Punjabi Consent and that GS never authorized the release of the Videos. The Committee finds that Mr. Gill prepared the Authorization and had GS sign same without explaining the nature of what was being signed. Given the limited English capabilities of GS, we find it problematic that he could understand, let alone create, the Authorization. The Committee therefore finds that it was Mr. Gill who created and prepared the Authorization.
188. The Committee finds Mr. Gill guilty of conduct deserving of sanction on citation 2.

### Analysis: Citation 3

#### *Arguments of LSA*

189. LSA argued that there were two aspects to this citation. The first being the creation of both a falsified Authorization and emails, done in an attempt to mislead the LSA investigator. The second facet is the attempt to influence witnesses by putting pressure on the aunt and uncle of SM to withdraw her complaint.
190. Counsel for LSA pointed out that the LSA investigator found the March 1, 2021 Reply Email and the March 3, Reply Email confrontational and used sophisticated language that was not appropriate for a non-English speaker. It would be difficult, if not impossible, to explain how GS could have sent these emails save for the involvement of Mr. Gill.
191. LSA counsel also argues that the “cease and desist” letter sent to the aunt and uncle of SM was intended as a form of pressure or influence being put on the aunt and uncle to have SM withdraw her complaint. This pressure aspect was also evidenced by the neighbours of the uncle and aunt, who were acquaintances of Mr. Gill, and who had asked the uncle and aunt to have SM withdraw her complaint.

### *Arguments of Mr. Gill*

192. Counsel for Mr. Gill argues that the evidence of the LSA investigator, SF, regarding his conclusions about the suspicious nature of the March 1, 2021 Reply Email and March 3, 2021 Reply Email is inadmissible as evidence, as being hearsay.
193. Mr. Gill's counsel emphasizes that the Location Screenshot, which was sent to SF, was not part of either the March 1, 2021 Reply Email or the March 3, 2021 Reply Email. Rather that Location Screenshot, with the GPS information, was in an email sent by HG on behalf of GS to the LSA on April 21, 2021. Counsel thus argues that the screenshot is of zero probative value given that it was not specifically included with either the March 1, 2021 Reply Email or the March 3, 2021 Reply Email. More to the point, HG or GS could have been in the vicinity of Mr. Gill's office on many occasions, particularly considering that the wife of GS had been at Mr. Gill's office in March 2021 to look at her immigration file.
194. It is also argued by Mr. Gill's counsel that the signing off of the emails by saying "Thanks" was also used by the sister of GS.
195. Mr. Gill's counsel also finds it preposterous that HG only saw the March 1, 2021 Reply Email and the March 3, 2021 Reply Email after her child was playing video games on the cell phone of GS, who had a practice of video recording his sexual encounters.
196. It is further argued by counsel for Mr. Gill that the LSA did not enter any expert evidence of document analysis or textual analysis to support either GS or HG's claims that Mr. Gill was the author of the March 1, 2021 Reply Email or the March 3, 2021 Reply Email or that GS's claim that he did not sign the Authorization on September 16, 2020. As such, the evidence falls far short of being clear, convincing and cogent.
197. Finally, counsel for Mr. Gill argues that the evidence from the witnesses about pressure being put on SM to withdraw her complaint is hearsay evidence and not admissible.

### *Analysis*

198. The Committee does not agree with Mr. Gill that the evidence of SF regarding his interpretation of the March 1, 2021 Reply Email and the March 3, 2021 Reply Email is hearsay evidence. This is not second-hand evidence given about something which another person has seen or heard. The evidence of SF regarding his interpretation of the two emails is more in the nature of opinion evidence. While SF was not qualified as an expert, there are exceptions where lay witnesses can express opinions. The Court in *O'Kane v Lillqvist-O'Kane*, 2021 ABQB 925 (CanLII), following the Supreme Court of Canada case of *Graat v R.*, [1982] 2 SCR 819, stated:

[10] Following *Graat*, leading texts have distilled four criteria for admitting lay evidence under the compendious statement of facts exception that have, in turn, been accepted by courts. Lay opinion evidence may only be accepted if:

- (1) the lay witness is in a better position than the trier of fact to form the conclusion;
- (2) the conclusion is one that persons of ordinary experience are able to make;
- (3) the witness, although not expert, has the experiential capacity to make the conclusion; and
- (4) the opinions being expressed are merely a compendious mode of stating facts that are too subtle or complicated to be narrated as effectively without resort to conclusions.

199. While the Committee has found the opinions of SF helpful in drawing our attention to certain aspects of the March 1, 2021 Reply Email and March 3, 2021 Reply Email, we would agree that the opinions of SF do not fall under the above noted exception. The Committee is well able to form their own opinions and conclusions regarding these emails and to that extent the Committee has not placed any probative value on the opinions of SF.
200. Mr. Gill has argued that the Location Screenshot has zero probative value because it did not follow in time with either the March 1, 2021 Reply Email or the March 3, 2021 Reply Email. While the Location Screenshot was not part of either the March 1, 2021 Reply Email or the March 3, 2021 Reply Email, that does not mean it has no probative value and there was no evidence to suggest that the Location Screenshot was representative of being taken on March 1, 2021. The Committee finds that the screenshot has probative value for the following reasons:
  - (a) The date on the Location Screenshot is March 1, 2021, which date matches the March 1, 2021 Reply Email and to that extent it is reliable.
  - (b) The time of the Location Screenshot is 6:15 pm while the March 1, 2021 Reply Email is 6:10 p.m.
  - (c) The locality on the Location Screenshot is at an address in very close proximity to the offices of Mr. Gill.
201. On the issue of credibility between GS and Mr. Gill, we accept the evidence of GS for the following reasons:
  - (a) Mr. Gill, who had provided the LSA with the email address of GS, had then told GS that he should expect to receive an email from the LSA. It would be therefore reasonable that Mr. Gill, who was aware that GS had not knowingly signed the

Authorization, would request that GS communicate with him if the LSA were to contact GS.

- (b) GS then received an email from the LSA investigator on March 1, 2021 at 8:28 a.m. and on that same day there is the Location Screenshot at or very near the offices of Mr. Gill. This Location Screenshot corroborates the claim of GS having met with Mr. Gill on March 1, 2021. The receipt of the LSA email and the meeting date cannot simply be mere coincidence, and it is reasonable to conclude that GS went to see Mr. Gill on March 1, 2021 in response to the LSA email from earlier that same day.
- (c) GS's version is inherently believable given the flow of events from the signing of the Authorization without knowledge and the subsequent contacting of Mr. Gill as follows:
- February 3, 2021: Mr. Gill is advised of SM complaint.
  - February 14, 2021: Authorization is signed by GS.
  - March 1 and 3, 2021: Mr. Gill meets with GS to create reply emails.
- (d) GS was firm in stating that Mr. Gill drafted both the March 1, 2021 Reply Email and the March 3, 2021 Reply Email. GS's memory of these two emails and how they were created appears to be unaltered by time and his recollection of events appear accurate.
- (e) GS did not appear to be evasive.
- (f) There was no motive or reason for GS to deny that he was the author of the March 1, 2021 Reply Email and the March 3, 2021 Reply Email while Mr. Gill would have certainly wanted to derail any further investigation into the Authorization.
- (g) The evidence of GS is consistent with evidence of his sister, HG, and in particular that GS advised his sister that it was Mr. Gill who drafted the March 1, 2021 Reply Email and the March 3, 2021 Reply Email. HG found the two reply emails "shocking" and she confronted her brother, GS, about the emails.

202. Mr. Gill has argued that it was outlandish that HG would allow her son to play video games on the cell phone of GS, given that her brother had a practice of video recording his sexual encounters. The Committee agrees that this would be the case if HG knew about the Videos or that she knew that other sexually explicit videos were on her brother's cell phone. There is no evidence that HG was aware of the contents of the GS's cellphone. Furthermore, the evidence was that the Videos were sent by WhatsApp, but it is not certain or clear if the Videos were initially recorded by GS on his cell phone.

203. The Committee also finds that it was Mr. Gill who drafted the March 1, 2021 Reply Email and the March 3, 2021 Reply Email, and not GS, for the following reasons:
- (a) Most striking was the combative nature of these two emails, especially in light of the email of March 1, 2021 where the investigator was merely wanting confirmation of GS's consent or the second email from the LSA asking if they could speak with GS. For example, GS appeared to be offended by the request to speak in person and that this was none of the Manager's business. Also, the sentence, "I prefer only e-mail communication, especially with your suspicious personality".
  - (b) Both emails contained English terms and language that suggest someone with a greater command of the English language than that possessed by GS. For example, the use of such words as "unconditional" and "no expectation of privacy" would not be used by someone whose English language skills were not strong. By way of further example, the March 1, 2021 Reply Email and March 3, 2021 Reply Email used such words as "Honorable lawyer", "recruitment", "suspicious" and "inappropriate".
  - (c) Mr. Gill had earlier advised the LSA investigator that he had "screwed up" and it would not make any sense for him to complicate matters further by pretending to be GS. Mr. Gill had much to lose from any communication between GS and the LSA in light of the unauthorized release of the Videos. It would therefore make much sense for Mr. Gill to take a confrontational tone with the March 1, 2021 Reply Email and the March 3, 2021 Reply Email in the hopes of derailing the LSA investigation.
  - (d) GS had used the phrase "end-to-end encryption medium" in the March 3, 2021 Reply Email, which was a term used by Mr. Gill when he was explaining why he used the WhatsApp application. GS had no knowledge about WhatsApp features, and it would be unreasonable to conclude that GS would use this phrase in any of his communications.
204. The Committee agrees with Mr. Gill that the signing off of the emails with "Thanks" is not indicative that Mr. Gill prepared either the March 1, 2021 Reply Email or the March 3, 2021 Reply Email. The use of "Thanks" as a sign off is too generic and common to be of any probative value. The same can be said for the misspelling of the last name of GS, which could be simply a typographical error.
205. The Committee also agrees with Mr. Gill that the evidence from the witnesses about pressure being put on SM to withdraw her complaint is hearsay evidence and not admissible. Even if the evidence was admissible, it was insufficient to establish that Mr. Gill attempted to pressure or influence SM to withdraw her complaint.

206. Mr. Gill takes the LSA to task for not obtaining expert evidence of document analysis or textual analysis to support either GS or HG's claims that Mr. Gill was the author of the March 1, 2021 Reply Email or the March 3, 2021 Reply Email or GS's claim that he did not sign the Authorization on September 16, 2020. While such evidence is always helpful, the final arbitrator of the relevance and materiality of evidence rests with this Committee as the trier of the facts. The lack of expert evidence does not necessarily mean that the evidence was not otherwise clear, convincing and cogent.
207. On a balance of probabilities, the Committee finds that a practical and informed person would agree that the version and likelihood of events, as evidenced by GS is most consistent with a conclusion that Mr. Gill drafted and prepared both the March 1, 2021 Reply Email and the March 3, 2021 Reply Email. We find that the evidence is clear, convincing and cogent.
208. On citation 3 we find Mr. Gill guilty of conduct deserving of sanction.

#### Analysis: Citation 4

##### *Arguments of LSA*

209. It was submitted by LSA counsel that between February and October 2022 Mr. Gill was granted 15 extensions to file his obligatory response to the February 3, 2022 investigation report. The report by Conduct Counsel was completed on October 31, 2022 and Mr. Gill did not provide his response until November 11, 2022.
210. LSA counsel also questions the claim by Mr. Gill that he needed the extensions due to health reasons when Mr. Gill was able to provide a 15-page letter to the LSA in the summer of 2022 alleging systemic and institutional discrimination and bias.

##### *Arguments of Mr. Gill*

211. Counsel for Mr. Gill argues that CB agreed to a number of extensions due to the health issues of Mr. Gill. Though the extension request to October 30, 2022 was refused, Mr. Gill did provide comprehensive submissions from Mr. Gill on November 11, 2022, four days in advance of the deadline date that Mr. Gill had sought or twelve days after October 30, 2022 deadline.

##### *Analysis*

212. The Code states:

7.1-1 A lawyer must reply promptly and completely to any communications from the Society.



213. Mr. Gill sought extensions of time on 16 occasions between February and October of 2022, and on 15 of those occasions the extensions were granted. Mr. Gill testified that due to a bad car accident he was experiencing medical issues and that this was the principal reason for his extension requests, including the October 30, 2022 request. Furthermore, Mr. Gill's general account was under the custodian's control and as such Mr. Gill had limited funds to retain a lawyer which was delaying his ability to respond.
214. Mr. Gill's response to the LSA was last due on October 30, 2022. Mr. Gill sent an email to CB stating: "I am requesting extension for my response which was due today. I am seeking extension till November 30 to file my response as I am struggling with my health and some other issues. This extension will give me enough time to file my response." This extension request was not granted and on October 31, 2022 CB advised Mr. Gill that her report had been completed and was being forwarded to a Conduct Committee Panel. Mr. Gill provided his written response to CB on November 11, 2022, which response was not provided to the Conduct Committee Panel.
215. At no time did Mr. Gill either not reply "promptly and completely" to the communications from the LSA. In every instance Mr. Gill sought extensions and was in fact communicating with the LSA throughout the time period in question.
216. On citation 4 the Committee finds Mr. Gill not guilty of conduct deserving of sanction.

#### Analysis: Citation 5

#### *Arguments of LSA*

217. It is the position of LSA counsel that the 2021 audit showed more than 300 inactive files with about \$240,000.00 in trust for more than two years with some dating back to 2013. These funds had not been disbursed back to clients. In addition, there were some 145 stale-dated cheques totaling \$28,000.00.
218. It is further argued that Mr. Gill had not made reasonable efforts to locate clients, which required three unique attempts. In respect of the spreadsheet of attempts made by Mr. Gill to contact clients, there were only 195 entries, which was short of more than the 300 inactive files. Mr. Gill's log of attempts showed repeated calls with numerous similar unsuccessful efforts made about every six months, which was not reasonable.
219. It is noted by LSA counsel that Mr. Gill was asked on March 22, 2021 to provide additional information for matters listed on the spreadsheet tab of "Undisbursable Fund", and that Mr. Gill did not provide this information.
220. LSA counsel also refutes the argument by Mr. Gill that section 117(1) of the *Act* applies since at all times clients were known to him and were locatable. LSA counsel argues that this ignores the numerous blank entries on the spreadsheets. LSA further argues that Mr. Gill gave undertakings on a Corrective Action Plan signed by Mr. Gill on September

25, 2019 to take steps to address the issue of undisbursed funds, which steps were not taken.

221. In summary, LSA counsel argued that Mr. Gill failed to regularly review inactive files, and he made no reasonable efforts to return client funds. Furthermore, Mr. Gill failed to remit funds to the LSA where required.

#### *Arguments of Mr. Gill*

222. Mr. Gill's counsel argues that Rule 119.27 (as it was at the relevant time) did not address how "undisbursable" trust money should be "handled". Section 117(1) of the *Act* refers to "unattributed" trust money and that it should be self-evident that "undisbursable" does not mean "unattributed". Unattributed trust money are funds that the lawyer is unable to attribute to any particular client or beneficiary. The *Act* does not create any obligation to report trust money to the LSA as "unattributed". In two circumstances the *Act* allows the lawyer the option ("the member may apply") to pay the money to the LSA. Those two circumstances do not apply to any of the money in Mr. Gill's trust account at the relevant times.
223. Mr. Gill's counsel further argues that neither the *Act* nor the Rules place any obligation on the member to apply to forward trust money to the LSA. The option given to lawyers under the *Act* to apply to forward trust monies to the LSA did not arise in this case because:
- (a) Mr. Gill knew the location of the persons for whom he held money in trust; and
  - (b) Mr. Gill was in all cases able to attribute money to a particular client, other person, or some multiple thereof.
224. None of the funds in Mr. Gill's trust account were "unattributed" and therefore at no time did Mr. Gill fail to handle the funds properly.

#### *Analysis*

225. The relevant section of the *Act*, dealing with unattributed trust money states:

##### Unattributed trust money

117(1) If money has been held by a member in the member's capacity as a barrister and solicitor in a trust account or separate account referred to in section 126 for a period of not less than 2 years and either

- (a) the member has been unable during that period to locate the person entitled to the money after reasonable efforts to do so, or
- (b) in the case of trust money in the member's trust account, the member is unable to attribute the money to any particular client or other person, the

member may apply to the Executive Director for permission to pay the money to the Society.

226. The relevant portions of the Rules dealing with undisbursable trust monies at the applicable time (which was subsequently amended on October 1, 2021) were as follows:

#### Undisbursable Trust Money

119.27 An application to the Executive Director under section 117(1)(a) of the Act must be submitted using the prescribed filing method on

- (a) a short form application as designated by the Executive Director, if the subject amount is under \$50, or
- (b) a long form application as designated by the Executive Director, if the subject amount is \$50 or more.

#### Unattributed or Undisbursable Trust Money

119.43(1) In accordance with subsection 117(1) of the Act, a lawyer who has held trust monies for more than two years and

- (a) has been unable to locate the person entitled to the trust money, or
- (b) is unable to attribute the trust money to any particular client or other person, may apply to submit the trust money to the Society.

(4) The lawyer must retain evidence of all efforts made to locate the persons entitled to the trust money or to attribute the trust money to a client or other person, including evidence of regular review of inactive client matters, which evidence must be included within the monthly trust account reconciliation, in accordance with subrule 119.37(3).

227. There are two aspects to section 117(1) of the *Act* that need to be addressed:
- i. Did Mr. Gill make reasonable efforts to locate the persons entitled to the monies? The trust funds in this case would be considered “undisbursable” and should have been remitted to the LSA.
  - ii. Were there clients of Mr. Gill that he was unable to locate? The trust funds in this situation would be “unattributed” and should have been remitted to the LSA.
228. It is Mr. Gill’s position that at all times he knew the location of all persons for whom he held trust funds and that at all times he was able to attribute trust monies to a specific client. As such it is Mr. Gill’s argument that none of his trust monies could be considered as either “undisbursable” or “unattributed” since he could always locate all clients and thus attribute to them the monies he held in trust on their behalf.

229. The flaw in Mr. Gill's position is that section 117(1)(a) of the *Act* states, "locate the person", which is qualified by Rule 119.43. Just because a lawyer has a name and telephone number for a client does not mean that the lawyer has "located" that person. Under the Rules, the locating of a client requires that a lawyer make efforts to contact that client to verify that the lawyer has been able to locate them. If this were not the case, then a lawyer who has a name, address and telephone number for a client may never have to remit funds to the LSA by simply claiming that the lawyer can "locate" the client. A client may have moved, changed cellphone numbers or email address and it cannot then be said that the client has been "located".
230. The Committee finds Mr. Gill guilty of failing to comply with Rule 119.27 for the following reasons:
- (a) While there were instances where Mr. Gill made efforts to locate and contact clients, there were numerous instances where no such effort was made. On the Log Attempts spreadsheet there were 85 out of 195 which were blank and did not show any attempts to contact the client. Furthermore, of attempts made by Mr. Gill to contact clients, there were only 195 entries out of some 300 inactive files.
  - (b) There were 303 inactive matters totaling \$242,673.84 in trust for more than two years, which had not been disbursed to the clients, of which about 240 dated back to 2014. None of these funds had been remitted to the LSA.
  - (c) On the Log Attempts spreadsheet Mr. Gill did make some attempts to contact clients, but there was often not more than one type of attempt, such as a telephone call. This cannot be considered as reasonable. It cannot be said that a client's location is known when you have not been able to actually contact them for many months or even longer.
231. The Committee finds Mr. Gill guilty of conduct deserving of sanction on citation 5.

Analysis: Citation 6

*Arguments of LSA*

232. It was submitted by LSA counsel that Mr. Gill promised in 2019 to modify his Client Identification and Verification form and to attend to better compliance with this form. However, the audit findings in 2021 showed no different form used and the previous observations of non-compliance remained the same, if not worse. In the sample of 8 client files, 7 cases remained uncompleted.
233. It was also put forth by LSA counsel that the fields on the Client Identification and Verification forms are not optional.

*Arguments of Mr. Gill*

234. Counsel for Gill references part of Rule 118.3(a) which provides that the client's place of work or employment are only to be recorded by the lawyer "where applicable". This determination of applicability should rest with the lawyer and not the LSA auditor.

*Analysis*

235. The relevant portions of the Rules dealing with client identification and verification at the pertinent time (which was subsequently amended on October 1, 2021) were as follows:

Requirement to Identify Client

118.2(1) Subject to subrule (3); a lawyer who is retained by a client to provide legal services must comply with the requirements of this Division, in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

118.3 A lawyer who is retained by a client as described in rule 118.2(1) must obtain and record, with the applicable date, the following information:

(a) for individuals:

- (i) the client's full name,
- (ii) the client's home address and home telephone number,
- (iii) the client's occupation or occupations, and
- (iv) the address and telephone number of the client's place of work or employment, where applicable;

(b) for organizations:

- (i) the client's full name, business address and business telephone number,
- (ii) other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (iii) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
- (iv) the name, position and contact information for the individual authorized to provide and give instructions to the lawyer with respect to the matter for which the lawyer is retained,

(c) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) or (b) as applicable.

236. The July 5, 2021 audit report noted that in 7 out of 8 (87.5%) client identification forms sampled that the clients' business address and business phone number had not been obtained and recorded.
237. Mr. Gill takes the position that the client's address and telephone number of the place of work or employment can be left blank since the expression "where applicable" in Rule 118.3(a)(iv) provides the lawyer the right to determine if this information is applicable. The Committee does not concur with this understanding of the identification form. Rule 118.3(a) sets out the identification requirements without exception. If a telephone number or address is not applicable, then that should be expressly indicated on the form along with a brief explanation as to why it is not applicable. For example, a retired client will not have a work number or address, and this can simply be indicated. Leaving this part of the form blank does not explain why it was not applicable.
238. Even if a client may not wish to be contacted at their place of employment, the phone number should still be indicated along with a note not to contact the client at this number. The identification forms are either done properly in compliance with the Rule or they are not.
239. The Committee finds Mr. Gill guilty of conduct deserving of sanction on citation 6 such that he has failed to comply with the Rules in respect of the requirements for client identification and verification.

#### Analysis: Citation 8

#### *Arguments of LSA*

240. LSA counsel states that BW was 19 years old at the time when she experienced inappropriate communications from Mr. Gill that left her feeling uncomfortable. It was further noted that BW only completed 80 of her 100 hours of internship due to the conduct of Mr. Gill.
241. It was submitted by the LSA that the conduct of Mr. Gill included the following:
- (a) During car rides Mr. Gill would confide in BW about intimately personal matters including his unhappy marriage.
  - (b) On one occasion Mr. Gill took BW out for lunch, despite her protests to return to the office, and that Mr. Gill insisted on ordering alcoholic beverages for BW.
  - (c) After only a week of her internship, Mr. Gill provided his credit card to BW to buy a Michael Kors purse as a reward and Mr. Gill asked her to wear it at the office.

- (d) Mr. Gill excessively complimented BW by saying she was brilliant, smart and exceptional, even when BW was doing mundane tasks.
  - (e) BW testified that Mr. Gill would contact her via text message outside of work hours such as sending her daily good morning and evening texts.
242. LSA counsel further argues that the conduct of Mr. Gill at the Earls restaurant amounted to sexual harassment and, in particular:
- (a) Mr. Gill sent BW a barrage of text messages from the restaurant bathroom.
  - (b) These text messages included statements by Mr. Gill that he had purchased a gift to match BW's black dress, that "they were connected in a special way", that BW was "priceless" and that Mr. Gill would perish or die without her.
  - (c) Mr. Gill further described BW as a "goddess" and that her smile was "pure".
243. LSA counsel asserts that these text messages were not professional and were unwelcome by BW. The text messages upset BW to such a point that she left the restaurant crying.
244. It was noted by LSA counsel that Mr. Gill stated that he was intoxicated, that the text messages were of a suggestive nature and that no reasonable person would have sent those. Mr. Gill did send an email the day following the restaurant incident where he "apologize[s] unconditionally" but in that same email Mr. Gill says for which "he has no clue."

#### *Arguments of Mr. Gill*

245. It is submitted by Mr. Gill's counsel that BW did not initiate the complaint, but rather it was the estranged nephew of Mr. Gill, who was also being investigated by the LSA. It is further argued that while BW felt uncomfortable around Mr. Gill, she candidly acknowledged that she had never expressed any discomfort to Mr. Gill or that Mr. Gill had ever touched her.
246. According to counsel, Mr. Gill did send a number of juvenile text messages to BW suggesting that Mr. Gill's nephew liked her, but this does not amount to sexual harassment.
247. Mr. Gill's counsel finally states that BW sent an email to Mr. Gill where she wrote: "thanks again for the opportunity. I wish you and the firm all the best."

## Analysis

248. The evidence regarding citation 8 is not disputed:
- (a) Mr. Gill would confide in BW about intimately personal matters including his unhappy marriage.
  - (b) Mr. Gill provided his credit card to BW to buy a Michael Kors purse as a reward, which was done after BW had only been an intern for a week, and Mr. Gill asked her to wear it at the office.
  - (c) Mr. Gill markedly complimented BW by saying she was brilliant, smart and exceptional, even when BW was doing mundane tasks.
  - (d) Mr. Gill would text message BW outside of work hours such as sending her good morning and evening texts.
  - (e) The events at the Earls restaurant involved Mr. Gill sending BW a stream of text messages, including text messages that Mr. Gill had purchased a gift to match BW's black dress, that "they were connected in a special way", that BW was "priceless", that Mr. Gill would perish or die without her, describing BW as a "goddess" and that her smile was "pure".
  - (f) That BW left the restaurant crying and that she never returned to Mr. Gill's office, even though she had not completed her 100 hours of internship.
249. The Committee recognizes that Mr. Gill appears to have been intoxicated at the time of the Earls restaurant incident. While that may be the case, that cannot in any manner be a defence of the conduct of Mr. Gill. The text messages were clearly sexually suggestive and inappropriate.
250. The Committee also finds that the conduct of discussing personal marital issues, buying a purse, unwarranted compliments and sending texts outside of normal office hours is inappropriate. It is not that these actions in and of themselves are necessarily improper. However, these acts, viewed in the context of the age of BW, her short time at Mr. Gill's office and the suggestive nature of these actions taken as a whole, were sexually suggestive and harassing.
251. The Committee also notes that Mr. Gill did send an email the day following the restaurant incident where he "apologize[s] unconditionally that if it happened due to any of us." Mr. Gill's apologizing for "any of us" does not recognize his inappropriate and unprofessional behaviour. In that same email Mr. Gill says, "Anyways I am sorry once again if any action/s (which I have no clue) of mine had brought un uncomfortableness".



The Committee finds it incredulous that Mr. Gill could not possibly have any “clue” about how inappropriate his text messages were.

252. The Committee finds Mr. Gill guilty of conduct deserving of sanction on citation 8 of sexually harassing BW.

#### Analysis: Citation 9

##### *Arguments of LSA*

253. LSA counsel recited the evidence of TN where she stated that Mr. Gill made her feel uncomfortable as he would place himself or attempt to place himself very closely in proximity to her both physically and verbally. TN also stated that Mr. Gill often sat so close to her that she felt his leg touching hers and she felt him staring down her shirt.
254. LSA counsel also noted a further incident where TN had sat in with a sexual assault criminal client interview and that following the interview Mr. Gill proceeded to tell TN about the facts of the case in gross and graphic details. TN further stated that Mr. Gill used unprofessional language such as the “f-word” and that he made offensive hand gestures to recreate what had happened.
255. It was also submitted by LSA counsel that according to TN Mr. Gill unexpectedly hugged her after she informed him that she had passed her immigration consultant exam. TN gave evidence that she had to remove herself from the embrace of Mr. Gill.

##### *Arguments of Mr. Gill*

256. It is submitted by Mr. Gill’s counsel that TN, like BW, did not initiate this complaint, but rather TN was identified as a possible witness by the estranged nephew of Mr. Gill.
257. Counsel for Mr. Gill argues that TN was not candid in her evidence as to the circumstances of her employment terminating after she had received her immigration consultant license. It is also argued that there are no similarities between the three separate allegations of sexual harassment, and this does not amount to similar fact evidence.

##### *Analysis*

258. There is also conflict with the evidence between TN and Mr. Gill as follows:
- (a) TN says Mr. Gill intentionally sat close to her so that their legs would touch. This is denied by Mr. Gill and he says that they sat across from one another in a conference room.

- (b) TN says that Mr. Gill described a sexual assault matter in graphic detail and used unprofessional language. Mr. Gill denies that he conducted himself in such a manner.
  - (c) TN says that she could feel Mr. Gill staring down her shirt, which Mr. Gill also denies.
  - (d) TN says that Mr. Gill hugged her, which Mr. Gill denies.
259. Even if the Committee were to accept the evidence of TN, the Committee does not find that the evidence is sufficient to establish that Mr. Gill engaged in sexually harassing TN. While TN found the conduct of Mr. Gill unwelcome, that conduct was not sexual in nature and nor did it detrimentally affect the work environment nor lead to adverse job-related consequences for TN. Looking at the evidence from an objective point of view, we would find as follows:
- (a) While TN may have felt uncomfortable around Mr. Gill, being in close proximity, the incidental touching of legs cannot be objectively construed as sexual in nature.
  - (b) While TN testified that she “could feel” Mr. Gill staring down her shirt, there is no evidence that he in fact actually engaged in this behaviour.
  - (c) If Mr. Gill had in fact used gross and graphic language when describing a sexual assault case, which the Committee is not necessarily finding, that conduct, while unprofessional, would not amount to sexual harassment.
  - (d) On the issue of Mr. Gill allegedly hugging TN, the Committee accepts the evidence of Mr. Gill that he did not hug TN given his conservative values. Even if the hug did take place, it was done in the context of congratulating TN for passing an exam and cannot be objectively viewed as sexual in nature.
260. The Committee further finds that the reason TN left her employ with Mr. Gill was because she had just obtained her immigration consultant license. While the leaving of employment was also shortly after the purported hug from Mr. Gill, the more objective reason was because of TN becoming a licensed immigration consultant. While TN did not want Mr. Gill to know that she was still living in Edmonton, there is no reasonable basis to assume that this was due to Mr. Gill’s conduct.
261. Accordingly, on citation 9 the Committee finds Mr. Gill not guilty of conduct deserving of sanction.

### **Concluding Matters**

262. The Committee finds that citations 1, 2, 3, 5, 6 and 8 have been proven on a balance

of probabilities and that Mr. Gill's conduct is deserving of sanction.

263. The Committee will convene a hearing to hear submissions on sanction, costs, notices and any other outstanding issues.
264. 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. Gill will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated December 13, 2024.

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Bud Melnyk, KC

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Ryan Anderson, KC

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Louise Wasylenko