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 MARTIN SCHULZ
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Deanna Steblyk, KC – Chair
Troy Couillard – Lawyer Adjudicator

Appearances
Shanna Hunka – Counsel for the Law Society of Alberta
Simon Renouf, KC – Counsel for Martin G. Schulz

Hearing Date
July 8, 2025
July 25, 2025
October 8, 2025

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

Overview

Citations

1. The following citations were directed to hearing by a Conduct Committee Panel on September 10, 2024 (Citations):

    1) It is alleged that Martin G. Schulz scheduled a Judicial Dispute Resolution without his client's knowledge and contrary to his client's instructions and that such conduct is deserving of sanction.

    2) It is alleged that Martin G. Schulz failed to provide reasonable notice of his withdrawal from representation of his client and that such conduct is deserving of sanction.

The Member

2. Martin G. Schulz is an active member of the Law Society of Alberta (LSA) who was called to the Alberta bar in 1991. He practices in Edmonton, primarily in the area of personal injury litigation.

Factual Background

3. The complainant in this matter, MWR, was involved in a motor vehicle accident (Accident) in the United States (U.S.) on August 21, 2014. He sustained injuries in the Accident, including a head injury that left him with short-term memory loss, cognitive problems, and difficulty focusing. As a result, he is no longer able to work.

4. MWR was initially represented by a U.S. lawyer who settled part of MWR's personal injury claim against the at-fault driver for her $100,000.00 insurance policy limit. MWR's U.S. lawyer then referred him to counsel in Calgary (Initial Firm) to bring a claim in Alberta against his own insurer for additional damages.

5. MWR eventually became unsatisfied with the lawyers he dealt with at the Initial Firm. In particular, he objected to their attempts to settle his claim at mediation when he did not believe they were sufficiently prepared and he thought they would pressure him to accept a low settlement amount.

6. MWR therefore searched for a new lawyer and found Schulz's firm. They entered into a retainer agreement on April 10, 2019. Schulz remained responsible and involved in the file and oversaw its carriage, but a junior lawyer at the firm, SB, was often MWR's primary contact. Schulz was typically copied on the e-mail communications between SB and MWR, as well as SB's communications with others relating to the file.

7. The parties attended a judicial dispute resolution (JDR) conference with Justice G. Campbell (Campbell J) of the Alberta Court of Queen's Bench (now the Alberta Court of King's Bench) on October 1, 2020 (Initial JDR). The parties' respective settlement positions were far apart, and Campbell J adjourned the Initial JDR to allow MWR and his counsel to obtain certain additional evidence. She directed the parties to reappear before her within 90 days to continue the JDR (Continued JDR).

8. As discussed further in our reasons below, MWR and Schulz came to disagree about scheduling the Continued JDR and the work that was required to prepare for it. In June 2022, Schulz's office booked the Continued JDR for February 2, 2023. MWR maintained that Schulz did so without his knowledge and contrary to his instructions.

9. MWR and Schulz continued to disagree over the content of the brief that was to be submitted on MWR's behalf for the Continued JDR. Matters came to a head in January

2023 as Schulz's office attempted to get MWR to instruct them to file on or before the January 19, 2023 deadline, the brief they had prepared, and MWR insisted that it required more work.

10. This disagreement led Schulz to send MWR letters on January 18 and January 25, 2023 advising that he would be withdrawing as counsel and urging MWR to find new counsel as soon as possible. Although Schulz did not file a formal Notice of Withdrawal until February 7, 2023 and did not serve it on MWR until February 13, 2023, neither he nor anyone else from his office attended the Continued JDR with MWR on February 2, 2023.

11. MWR and defence counsel appeared on February 2, 2023, but the Continued JDR was adjourned to allow MWR time to find new counsel. He eventually did so, and his claim was settled in late 2023.

The LSA Hearing

12. On July 8, 2025, a hearing into Schulz's conduct commenced before this hearing committee (Committee), based on the above Citations (Hearing). The Hearing continued on July 25 and October 8, 2025.

13. After reviewing the evidence, hearing the testimony of the Hearing witnesses, and considering the arguments made on behalf of the LSA and Schulz, the Committee finds Schulz guilty of conduct deserving sanction on both Citations, pursuant to section 71 of the *Legal Profession Act* (*Act*). Our reasons for this determination are set out below.

Preliminary Matters

14. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. Therefore, the Hearing proceeded in public on the dates mentioned.

15. Originally, the Committee was comprised of three members. However, one member's term as Public Adjudicator ended on August 31, 2025. The parties agreed that, pursuant to section 66(3) of the *Act,* the Committee could continue as a two-member panel.

Evidence

16. In addition to documentary evidence adduced by both parties and referenced in this decision, MWR and Schulz each testified before us. There were no other witnesses.

17. MWR testified first, and began by describing the Accident, his injuries, and the legal representation provided by his U.S. lawyer and the Initial Firm in Calgary, including the circumstances that led him to retain Schulz. This evidence was largely as summarized above under the heading, Factual Background.

18. MWR appears to have begun to have concerns about the representation he was receiving from Schulz at and following the Initial JDR. He described feeling “attacked” by the defence at the Initial JDR, and “embarrassed” because he did not think his counsel were properly prepared. He indicated that there were errors in the brief Schulz’s office filed (Initial Brief), and that despite his e-mails to Schulz’s office correcting the errors, the corrections were never made.

19. E-mails showed that between March and June 2021, SB was communicating with court administration trying to schedule the Continued JDR. Schulz testified that by the summer of 2021, his office had all of the material they needed – including certain documents about hearing aids that MWR wanted to add – and were ready to schedule the Continued JDR.

20. On June 15, 2021, SB sent an e-mail to MWR indicating that Schulz wanted to set up a meeting with him over Zoom.

21. MWR replied the next day, June 16, 2021, to request an agenda for the meeting and copies of any documents he would need to consider so that he could prepare for the meeting by reviewing them in advance. At the Hearing, MWR testified that he refused all meetings and telephone calls without having an agenda and documents to review beforehand because his brain injury made it difficult for him to comprehend and remember things. He also acknowledged that because he was so upset at how the Initial JDR had gone, he was not eager to speak to Schulz at that time.

22. Schulz testified while he was aware of MWR’s brain injury, at the outset of his retainer, MWR never said that he needed time to absorb written materials before he could discuss them. According to Schulz, MWR only raised it later in their relationship. However, he acknowledged that after a certain point, MWR would answer e-mails, but did not want to speak on the telephone or meet in person. Schulz still preferred to speak or meet because he had found earlier in their relationship that when MWR got anxious about something, he could “talk [MWR] down” and get him to accept legal advice if they spoke on the phone or had a meeting.

23. On June 21, 2021, SB e-mailed MWR to advise that the purpose of the proposed meeting was to discuss the Continued JDR. She also set out a list of documents they would like to discuss.

24. MWR replied on June 22, 2021, and expressed dissatisfaction about a number of things. He questioned how they could be discussing a Continued JDR when none of the issues raised by the defence at the Initial JDR had been addressed. He suggested that one of the expert reports that Schulz’s office had obtained on his behalf was full of mistakes and speculated that no one was reading the e-mails and other information he provided.

He also said that he did not see the need for a phone call until updated information was ready, and did not see the point in scheduling the Continued JDR until everything raised at the Initial JDR had been addressed.

25. MWR explained during his testimony that he did not want to book the Continued JDR at that time because he did not see the sense in going before the same defence counsel and the same judge with the same materials that had been presented at the Initial JDR with no success. He maintained that he was consistent in voicing this position to Schulz and SB.

26. As for the timing of the Continued JDR, MWR stated as follows in his June 22, 2021 e-mail:

> The timing of the follow up JDR is up to your office and determined by when we have the information required to justify a follow up JDR meeting without be[ing] embarrassed as at the first JDR meeting.

27. SB replied later on June 22, 2021, and noted that they had been trying to book phone calls and meetings with MWR since the Initial JDR so they could discuss the issues. She advised that the main outstanding inquiry from the Initial JDR concerned payments MWR received from the Workers' Compensation Board (WCB) relating to a prior unrelated injury. At the Hearing, Schulz explained that the Initial JDR was only adjourned because Campbell J had asked whether the WCB had a subrogated claim that might affect the matter and had also requested certain evidence to support MWR's loss of income claim.

28. MWR responded on June 22, 2021 to reiterate that he felt there was no point in talking on the phone or having a meeting until all of the necessary information had been collected and his counsel were prepared. He indicated that because of his brain injury, he found it stressful to talk on the phone without written materials in front of him to discuss – a point he repeated in subsequent e-mails. He further stated:

> At this point we are waiting for your office to prepare responses to the defence and judge [sic] questions then we can discuss those for accuracy and then we will be ready for the JDR. The sooner your office is prepared the sooner we can have the meetings. I am not the hold up.
>
> This has always been my position. I [d]o not want to be subject to another embarrassing and unprepared meeting.
>
> Awaiting the information from your office so we can mo[v]e forward.

29. On June 23, 2021, Schulz sent an e-mail to MWR in which he stated:

> You have the JDR Brief.
> All the information is contained in the brief. Please read it.
> And then come to my office to discuss strategy before we head to the JDR.
> I was not unprepared last time. I was not embarrassed. Stop this.
> If you do not want to work with us, just say so.
> I will gladly step aside. What I will not put up with is your derogatory comments.
> You need to come to my office before the JDR or find yourself a new lawyer.

30. On June 28, 2021, MWR replied to Schulz reiterating the impact of his brain injury and his need to have information and time to consider before he could make decisions. He also reiterated his position that there were still errors and information missing from the Initial Brief, as well as his embarrassment at the Initial JDR that issues had arisen that they could not address. He again said that he considered it pointless to go to the Continued JDR with the same information they relied on before. As for Schulz's offer to "step aside", MWR said, "[s]tepping aside or not is up to you, there is nothing I can do about what you decide to do."

31. There was nothing in the evidence to indicate that Schulz replied to this e-mail, but MWR followed up on July 19, 2021. He mentioned that he had sent an e-mail with questions that had not been answered and reiterated that he did not want to go to the Continued JDR until they had a strong presentation with the necessary backup information.

32. When asked about MWR's insistence on further preparations for the Continued JDR, Schulz testified that, "[MWR] had a whole bunch of . . . things that he wanted us to do that we couldn't do", and that they could not figure out what additional information MWR wanted to include.

33. In the meantime, other e-mails indicated that in late June 2021, SB was still communicating with court administration and defence counsel to schedule the Continued JDR. These efforts continued through August and September that year. On September 15, 2021, court administration offered October 5, 2021. However, when the court followed up on September 20, 2021, SB replied to indicate that she had "reached out to [their] client but [had not] got confirmation yet".

34. The next significant piece of correspondence in evidence was a letter from Schulz to MWR dated October 6, 2021. After noting that his office had made several attempts to set up a meeting with MWR and MWR had not agreed, Schulz stated:

> We have concluded that there has been a breach [of] trust and you have failed to instruct us and there is a serious loss of confidence in the lawyer-client relationship. Please contact our office immediately to set up an appointment so the matter could be discussed.

35. MWR replied by e-mail a few days later, on approximately October 11, 2021, to express his surprise at Schulz's October 6, 2021 letter. He said he felt that he had been clear about his instructions and the information he wanted included in the materials for the Continued JDR, as well as his wish to have copies in advance so he could review them before attending a meeting, but "[t]hose requests to your office have been ignored for over a year." He repeated the challenges his brain injury posed to his ability to read and process information and the stress caused by telephone conversations, as he had pointed out previously.

36. Despite his October 6, 2021 letter, Schulz continued to act for MWR. When a member of the Committee asked Schulz what kept him on the record until his January 2023 withdrawal letters, Schulz explained that he had been "hoping that the relationship would be restored". He felt that MWR would come around if they could talk, and hoped "that at some point . . . [MWR] would just snap out of it and start talking to us, or being more specific with what his objections were".

37. On January 24, 2022, MWR e-mailed Schulz again. He stated that he was not sure to whom he should send his correspondence because he did not know who was handling his case anymore and he had not received a letter or an e-mail from Schulz's office "for months". He asked for an update as to what was happening, as he still had not received the additional information for the Continued JDR that he said he had been requesting since the Initial JDR. He repeated his position that they had not been prepared for the Initial JDR because they could not answer all of the questions from defence counsel and the judge. He also reiterated his need for written communications.

38. Further e-mails were exchanged in February 2022. The first was from SB to MWR on February 7, 2022. SB indicated that Schulz had asked her to reach out to MWR to get instructions for a counteroffer to the defence's last settlement offer. She suggested offering to settle for $119,988,737.60 plus interest, costs, and disbursements. While this was obviously a typographical error, it was unclear what the number was supposed to have been.

39. On February 11, 2022, MWR replied to SB (copying Schulz) to repeat that he did not want to go to the Continued JDR with the same information that had not led to a reasonable settlement at the Initial JDR. He also stated:

> My instructions have not changed since the first JDR. Gather the information requested by the judge, and required by the defense lawyers,

> and needed to back up our claim for a reasonable settlement amount. Then I will review that information to ensure that we do not end up at a JDR with no more back up information tha[n] the first JDR. Then compile a reasonable settlement amount to request, that can be backed up with data. The back up data is supposed to come from your office. Then book the JDR and go to that meeting prepared to make a case for me. That instruction has not changed.

40. In her February 15, 2022 response to MWR, SB said that as they had explained previously, the Initial JDR was only adjourned so they could get the information Campbell J had wanted to see from the WCB. In his February 25, 2022 reply, MWR disagreed with that assertion because he had taken notes during the Initial JDR and felt that, "[t]here were many reasons the JDR was adjourned."

41. MWR was firm on this point in his evidence at the Hearing. When Schulz's counsel suggested several times that the only things Campbell J had asked for at the Initial JDR was confirmation from the WCB that there was no subrogated claim and financial records that would substantiate the loss of income claim, MWR denied that was the case.

42. MWR's February 25, 2022 e-mail (copying Schulz) again repeated that as far as he was aware, the additional information required still had not been prepared or gathered, and without it, he saw no point in booking the Continued JDR. If a revised JDR brief had been prepared, he asked to be given a copy of it, as well as a copy of the defence brief.

43. SB e-mailed MWR on April 26, 2022, attaching certain briefs and advising that all of the necessary information had been included. She further advised him that, "there has to be a significant advance [in the personal injury action] before October 2023". This was a reference to what is commonly known as the "drop-dead rule", Rule 4.33 of the Alberta *Rules of Court*. That rule requires that a significant step be taken in litigation before the expiry of three years since the last significant step, or the defence can apply to have the claim summarily dismissed. Since the last significant step had been the Initial JDR in October 2020, another step had to be taken before October 2023. SB therefore recommended in her e-mail that they either schedule the Continued JDR or start settlement negotiations.

44. At the Hearing, MWR testified that this e-mail was the first he had ever heard of the drop-dead rule. That evidence was in accordance with his reply e-mail to SB on April 27, 2022, in which he asked about the significance of the October 2023 date since it had not been mentioned to him before. He also said that he had glanced at the materials SB had e-mailed to him the previous day and concluded that they appeared to be the same as what they had already submitted at the Initial JDR.

45. In two e-mails on April 27, 2022, SB answered to clarify the significance of the October 2023 date and again suggested sending a counteroffer of settlement to the defence. She also acknowledged that the briefs she had sent him the day before were the briefs from the Initial JDR.

46. In a further e-mail on April 27, 2022, MWR responded to say that if they were going to send a counteroffer, it should be as accurate as possible – which was why he continued to press for additional information and corrections. He again stated that he did not see the point of going to a Continued JDR with the same materials from the Initial JDR.

47. MWR followed up with another e-mail on May 3, 2022. He again stated that he was waiting for the information he had asked to be included, and at that time, they would be ready for a Continued JDR. He again stated that he did not understand why they would submit the same materials they submitted for the Initial JDR, which failed to lead to a settlement.

48. SB replied by e-mail on June 10, 2022, again asking MWR to schedule a meeting with Schulz so they could move the matter forward. Schulz followed up on June 15, 2022 to repeat the request for a phone call or meeting. He told MWR:

> I really need you to talk to me so I can continue to represent you.
> I need to get instructions from you to return to the JDR and see if we can finalize your case.
> Without any communication from you, I will not be able to continue to represent you unfortunately.

49. On the same day, June 15, 2022, SB got back in touch with court administration by e-mail to seek dates for the Continued JDR. MWR testified that he was not aware of this step being taken.

50. MWR replied to Schulz on June 16, 2022. He indicated that he was confused by Schulz's June 15, 2022 e-mail, because he had been giving the same instructions since the Initial JDR: gather the necessary information to address the concerns of the defence and the judge, otherwise there is no point in going to a Continued JDR and expecting a different result. Then, "[o]nce your office assembles the information that was required by the first JDR, and I have reviewed that information to be sure we are ready, we will move forward."

51. Schulz testified that by this time, he felt that he had to take a step and book the Continued JDR to protect MWR's case from the drop-dead rule, and to discharge his obligation to the court – as mentioned, Campbell J had directed the parties to bring the matter back before her within 90 days of the adjourned Initial JDR. His office proceeded, hoping that MWR "would come around".

52. On July 5, 2022, the court sent a letter to the parties' counsel to confirm that the Continued JDR had been booked for February 2, 2023. MWR was not included on that correspondence.

53. On July 18, 2022, MWR wrote to SB stating that he was still waiting for the necessary information to be gathered so the JDR could resume. SB replied on July 19, 2022 to advise that she was working on revising the Initial Brief (Revised Brief) and would send it to him shortly. She did not mention the February 2, 2023 date for the Continued JDR.

54. SB sent MWR the Revised Brief on August 22, 2022. At that time, she also told him that the Continued JDR had been scheduled for February 2, 2023.

55. MWR responded 13 minutes later. He stated that he hoped the Revised Brief had not been provided to anyone else, because it still contained errors and it appeared they still had "lots more work to do". He also stated, "I don[']t remember agreeing to the new date". At the Hearing, MWR testified that he never agreed to a date. When SB told him it had been booked, he testified, "[i]t was just right out of the blue, I didn't know where that came from because we had never talked about a fixed date. We had always talked about getting the information ready and then setting the date."

56. Schulz acknowledged on cross-examination at the Hearing that while his office had confirmation that the Continued JDR was booked on July 5, 2022, they did not advise MWR of the date until August 22, 2022. He said that it was his office's "standard practice to let everyone know as soon as it's booked", but blamed summer holidays for his office's failure to follow its standard practice. When asked why no one ensured MWR would be available for the Continued JDR on February 2, 2023 before booking it or included MWR in the scheduling correspondence with the court and the defence, Schulz explained that he knew MWR "was available all the time" because he was not working.

57. Concerning the Revised Brief, MWR acknowledged at the Hearing that it included some changes, but he felt that it was still substantially the same as the Initial Brief and that the changes he had been asking for still had not been made. Schulz's counsel challenged that MWR could not possibly have reviewed the entirety of the Revised Brief and its attachments in 13 minutes, but MWR insisted that he knew where the errors were and only had to look in those places to conclude that it did not address all of his concerns.

58. In her reply to MWR's August 22, 2022 e-mail later the same day, SB explained that the Revised Brief was not due until January, and that it was only a draft for him to review. She further explained that they had set a date for the Continued JDR so that they would have a deadline to work toward, to address the concern about the drop-dead date in October 2023, and because it had become hard to secure JDR dates since the

pandemic. In a further e-mail that day, SB also asked MWR to advise her of any changes he wanted made to the Revised Brief.

59. MWR next e-mailed Schulz's office on September 22, 2022. He stated that he was discouraged to see the same information in the Revised Brief that had been included in the Initial Brief and rejected at the Initial JDR. He repeated that he had sent comments and corrections, but they were not addressed. He also repeated that he did not see the point in going to a Continued JDR without all of the necessary information, and that more preparation was needed because he had been embarrassed at the Initial JDR. He reiterated his position as follows:

> I have said many times now, the delay in getting another JDR and a settlement is the fact that your office has not assembled the information required to convince the judge and the insurance company to pay me the money which I deserve.

60. SB answered later September 22, 2022, outlining the specific changes she had made in the Revised Brief – MWR's claim concerning his hearing aids was added, the WCB issue Campbell J had raised was addressed, and the loss of income claim had been updated based on a revised expert report. She explained that certain special damages claims he had asked for could not be included, and that if the defence submitted a brief with information they did not agree with, it could be addressed during discussions at the Continued JDR. She also asked him to be specific as to what he felt they needed to do to get prepared.

61. MWR did not respond until November 1, 2022, at which time he replied to SB and copied Schulz. He again stated that the briefs he received seemed to be the same briefs from the Initial JDR, and that he could not understand why they would do that and expect a different result. He voiced his discouragement and again stated that although he had provided information to Schulz's office, it had been ignored, as had his questions about the case.

62. MWR then set out a list of eight items under the heading, "WHAT I FEEL NEEDS TO BE DONE IN ORDER TO PREPARE FOR A FOLLOW UP JDR":

1. Correct the information in our brief. I have given a long response to your office of the many mistakes in that document.
2. Prepare responses to their brief to correct their mistakes and assumptions. Forward that information to them before the JDR.
3. Correct and provide a copy of our expenses sheet.
4. Correct and provide a copy of my lost income expenses sheet.
5. Answer the questions which I have asked your office about my case.

6. Provide me with [a] document explaining the costs involved, the settlement expected, and how the money will be divided[.]
7. MOST IMPORTANTLY, for the next JDR correct the information in the documents we will present and forward to me for comment, before the meeting. There is [no] point in me going through the stress I do to correct all the mistakes, if that information is not corrected in the official documents. You present a document to the best of your information, I point out corrections if needed, you make those corrections. Back and forth until we have a presentable document that can be defended. We are no where [sic] near that point yet.
8. When you make the corrections to documents that I have already pointed out, then I will review again for details. Until you make those corrections it is pointless for me to keep sending you the same comments over and over. It is waste[d] work and stress for me if I am just going to be ignored.

63. SB responded on January 9, 2023. She advised that the Revised Brief included revisions based on "the issues raised in the last JDR" and had to be filed on January 19, 2023. She again requested that he set up a phone call or Zoom meeting with Schulz and stressed the importance of filing the Revised Brief and going ahead with the Continued JDR to take another step to move the litigation forward.

64. MWR replied to SB at some length on January 10, 2023, copying Schulz. He said that because he had been making requests of Schulz's office that were not addressed, he wondered if they had been reading his e-mails at all. He again suggested that they get all of the required information together so they could go to a Continued JDR. He also responded to the items mentioned in SB's January 9 e-mail. In particular, he noted:

> I am not sure how we got to the point where a brief is due on any particular day. I was not party to agreeing to any dates yet. I have not reviewed the documents which are to be presented by your office at any upcoming JDR. I have never agreed to any date for the second JDR meeting. I did say that once your office has the information gathered and I have had a reasonable amount of time to review those documents then we can schedule a JDR meeting. As I have said before, I will not go to another JDR meeting as unprepared as we were for the first JDR meeting. It is embarrassing and a waste of everyone's time[.] . . .
> I reviewed the briefs which were sent to me. There is new information which I gathered but the other information required is still not in the brief nor backup material. . . . We are not waiting for me, we are waiting for your office to get prepared. After going to the last JDR unprepared when I was confident that your office would be organized, I can not [sic] feel that we are prepared for the second meeting until I review the information which we plan to present. . . .

65. Concerning the request for a call or a meeting, MWR went on to say:

> I am not sure why your office is not familiar with my case and my injuries. I have said many times that with my brain injury and the anxiety that phoning or meeting causes for me, I need an email or a written document to study and contemplate. . . . Even if your office is not familiar with my injuries I have asked in all of my emails for many months now, that I be contacted by email. I do not understand why that is unreasonable.

66. Consistent with this e-mail, at the Hearing, MWR testified that he had been surprised to get e-mails from Schulz's office indicating there was a deadline to file the Revised Brief because he had been saying all along that he did not want to go to the Continued JDR until all of the necessary information was ready.

67. SB responded on January 11, 2023 to request scheduling a meeting again, at which time they would "discuss all those issues". In response a few hours later, MWR sent another fairly lengthy e-mail stating, *inter alia*:

> I do not understand the reluctance of your office towards sharing information with me that I am paying for, and that will affect the rest of my life. . . .
>
> In order to move forward with my file it is important to have a meeting before the JDR. In order to have that meeting it is important to have an agenda and to have the information which will be discussed so that all parties can review and come prepared. I have neither an agenda [n]or the relevant information to review. . . . Once I have that we can move forward. I am waiting for your office. . . .
>
> I feel that I am being pressured to have a meeting, which will lead to a JDR, that we are not prepared for.
>
> I was told that a JDR would not be scheduled until I felt ready. Is that not true? . . .
>
> I am not sure why your office will not provide the information via email as lawyers always want to see everything [in] writing. As I have said many times, my mental injury does not allow me to process information very quickly so I need the information to go over slowly and multiple times, until I am able to understand everything that is involved. . . .

> This process of having meetings without knowing what the meeting will cover makes me very anxious and concerned. With my current heart and mental problems I do not need the stress. Everyone involved knows that I am mentally compromised due to my brain injury. I am hoping that I am not being taken advantage of because of my mental state.
>
> I was concerned that I felt bullied at the original JDR and I am again concerned.

68. In his Hearing testimony, Schulz denied that he ever told MWR that the Continued JDR would not be scheduled until MWR was ready. To the contrary, he pointed to MWR's June 22, 2021 e-mail stating that, "[t]he timing of the follow up JDR is up to your office", and said he relied on that as comprising MWR's instructions to schedule the Continued JDR as he saw fit. Schulz also denied that this was contradicted by his June 15, 2022 e-mail, in which he told MWR, "I need to get instructions from you to return to the JDR". He felt that scheduling was up to him, but he needed MWR's instructions to file a brief and appear at the JDR session. When he used the word "return" in the June 15, 2022 e-mail, Schulz explained, "return" meant "go and argue the case in front of a judge", not schedule the JDR.

69. On January 13, 2023, SB sent a lengthy written response to MWR. She began by asserting that all of the information for the Continued JDR was in the Revised Brief and asked again to schedule a meeting to discuss it. She reiterated the concern about the drop-dead rule and explained that attending the Continued JDR did not mean they had to accept an unsatisfactory offer, but it was a required step before a trial could be scheduled. She then set out 14 numbered points that MWR had apparently raised in the past and responded to them individually, in many instances either referring to the content of the Revised Brief or explaining why the point raised did not need to be addressed. It was unclear from the available evidence when MWR had asked the questions or raised the specific issues listed, as those e-mails were not before us.

70. In an e-mail on January 16, 2023, MWR replied that because he had asked questions many times that were not answered, he would have to go back to his previous e-mails to see if SB's replies covered his concerns. He again expressed his dismay about having only heard of the drop-dead rule recently, and questioned whether Schulz's office raised it when they did as "a pressure tactic". He commented on a few of the points SB made in her January 13, 2023 e-mail, but concluded that he would have to collect the necessary information himself and present it "at a future JDR".

71. SB's January 16, 2023 reply indicated that she had "tried replying to the list of tasks that you suggested our office should complete before the JDR", but reiterated that the only reason the Initial JDR had been adjourned was to clarify the loss of income claim and any WCB involvement. She reiterated the request for a meeting instead of e-mailing

back and forth, and noted that if they did not get MWR's clear instructions to file the Revised Brief on the due date before the end of the day on January 17, 2023, "we will not be able to submit the brief on time, and therefore proceeding with the JDR will not be possible".

72. MWR testified at the Hearing that he was confused by this request for instructions, because he had given the same instructions "over and over again".

73. SB followed up with another e-mail in the late afternoon January 16, 2023, asking for instructions to file the Revised Brief and proceed with the JDR. She again suggested a meeting "to clarify the details". The next day, MWR replied in part:

> You obviously have no idea how stressful this is for me.
>
> I have said since the JDR, 2 years and 4 months ago, that once I was assured that we had all the required information and I had reviewed it we could schedule the continuation JDR. I felt that in the 1 year and 6 months your office had the case pre JDR that information would have been gathered and the first JDR would be effective. It was not.
>
> I am not sure why I am being asked to sign off on a JDR appointment when we are not ready to present the information required to get a reasonable settlement.
>
> If a continuing JDR has been booked, I was not in the agreement conversation. If you[r] office has proceeded without me, it is hardly my fault that we wait until we are ready. If you have booked a JDR and are asking permission afterwards that is the wrong way around. If a JDR has been booked, the defence lawyer must know so why go to that step without my being fully aware of what is going on. . . .
>
> I have consistently said, get the information ready, let me review it (because of the experience last time), book the JDR knowing that we are ready, and let[']s get this done. . . . I say again, [b]ooking a follow up JDR without the preliminary steps is not right. . . .
>
> You are continually asking for a phone call knowing that I have mental issues and that phone calls are very difficult for me. I will agree to a phone call if your office provides me with an agenda, information I have asked for so that I can study the topics and be prepared before the phone call, permission to have someone else on the phone with me, and the knowledge that if the phone call becomes too stressful for me I can end the call.

Looking forward to moving forward.

74. On cross-examination at the Hearing, Schulz acknowledged that he took no steps to cancel the February 2, 2023 date for the Continued JDR, even after MWR objected. He was of the view that MWR was being "nonsensical" because they had already addressed the outstanding issues. He also pointed to SB's January 13, 2023 e-mail to MWR, in which she set out what she described as "the responses to [MWR's] concerns" in 14 numbered points. In his direct evidence, he similarly referred to the fact that "shortly before" the Revised Brief was due, his office "answered all of [the] specific questions" that MWR had raised.

75. Ultimately, Schulz acknowledged in his testimony that MWR never agreed to the February 2, 2023 date, and that his office did not suggest any alternative steps to MWR that could have been taken in the litigation to avoid the effect of the drop-dead rule.

76. Schulz also testified that MWR's refusal to approve the Revised Brief or take his calls was the "final straw" that led him to decide to withdraw from the file. He was of the view that MWR was not providing "reasonable instructions", as his office "had done everything that [MWR] requested, and that the Court requested".

77. In the late afternoon on January 18, 2023, Schulz's assistant e-mailed MWR a letter from Schulz also dated January 18, 2023. The letter read in part:

> Further to the above-noted matter, we write to you to advise that we can no longer represent you. There has been a breakdown in our solicitor-client relationship because of a lack of communication and our inability to obtain instructions from you to carry your litigation forward to a successful conclusion. We have tried to rebook the adjourned JDR on more than one occasion and you have refused to instruct us reasonably to carry on.
>
> Unfortunately, we cannot carry on representing you and you will have to retain other Counsel to carry your litigation forward. . . .

78. Schulz also reminded MWR of the steps that had been taken in his matter so far and the requirements of the drop-dead rule. He advised MWR to have his new lawyer contact his office to obtain the file materials.

79. On the same date, Schulz sent a letter to court administration stating:

> Further to the above-noted matter, there has been a breakdown of the solicitor-client relationship with our client, therefore we will no longer be representing [MWR]. We have advised [MWR] to seek new Counsel.

80. A similar letter was sent to defence counsel. Neither letter was copied to MWR until he requested copies on January 26, 2023.

81. At the Hearing, MWR testified that he did not know what to think upon receiving Schulz's January 18, 2023 letter, because Schulz had said similar things before and still stayed on the record. He was cross-examined on this point at some length, but reiterated that he did not take the letter (or Schulz's January 25, 2023 follow-up letter, described below) seriously because Schulz had said he was going to quit before.

82. On January 19, 2023, there was an exchange of e-mails among court administration, Schulz's office, and defence counsel. Court administration asked for a filed Notice of Withdrawal and a filed Affidavit of Service and inquired about the Continued JDR. When SB replied that they did not have instructions to file a brief and that she believed the JDR would have to be cancelled, court administration advised that all parties would have to consent to cancel or adjourn, and that Schulz "would still be on the record if he has not filed and serv[ed] a notice". She also expressed her concern that the JDR justice she assigned might be reading material from the file unnecessarily.

83. Defence counsel replied on the same day to state that they did not consent to the adjournment and inquired whether MWR could represent himself. SB later forwarded at least part of this e-mail exchange to MWR.

84. On the morning of January 25, 2023, court administration followed up to request a response to defence counsel's January 19, 2023 e-mail. SB forwarded this inquiry to MWR in the late afternoon that day. In the interim, Schulz had sent MWR a letter dated January 25, 2023 that stated:

> Further to our correspondence of January 18, 2023, which is enclosed for your ease of reference, we urge you to seek a new Legal Counsel urgently. Please have your new Counsel request your file from our office as soon as possible so we may transfer it to your new lawyer on reasonable trust conditions.

85. On the morning of January 26, 2023, MWR sent an e-mail to SB, copying Schulz, court administration, and defence counsel. He stated in part:

> I hope this email covers everyone who is interested.
>
> I am sorry that I did not respond to the email in question. I thought it was an inside lawyer joke. The one about the person who is his own lawyer has an idiot for a client. Apparently it was not. In the last 9 years I have never had plans to represent myself.

> The expectation that I would say I would represent myself with not even a day[']s notice after the law firm that was representing me quit right out of the blue, does not make sense. . . .
>
> I think I would now need more than the 10 business days left from Jan 19, 2023 to February 2, 2023 (a date set by others and not me) for lonely me to prepare a presentation towards something [that] has affected the last 9 years of my life plus whatever time I have left to live. We all know I suffered a brain injury in my accident and have had mental problems ever since. That would make representing myself even more difficult.

86. MWR also apologized for the delay in his case and advised that he was doing his best to get a new lawyer.

87. On February 2, 2023, MWR attended the Continued JDR by himself, by telephone. Defence counsel and the judge were also present, but no one from Schulz's office appeared. Although the judge noted that she did not have a record of Schulz withdrawing, she granted MWR an adjournment so he could secure new counsel. MWR testified that he had expected that Schulz would attend the Continued JDR by telephone.

88. In his evidence, Schulz acknowledged that he was aware that a withdrawal by counsel is not formalized until 10 days after the affidavit attesting to the service of the Notice of Withdrawal on the client is filed. He therefore acknowledged that "technically", he was still counsel of record on February 2, 2023 despite his two January 2023 letters to MWR. He further acknowledged during his direct evidence that he could have attended the Continued JDR on February 2, 2023 but did not because he was feeling "pretty deflated" about the whole matter by then. He also suggested that there may have been "a mix-up in the communication" between him and SB as to which of them would attend.

89. Regardless, Schulz said that he was not concerned about not attending on February 2, 2023 because he was confident that MWR would easily get the Continued JDR adjourned until he obtained new counsel. For the same reason, he said, he did not indicate in either of his January 2023 letters to MWR whether he would be in attendance, or provide MWR with any guidance about what he could expect on February 2, 2023.

90. On February 3, 2023, SB sent MWR a link so he could access the defence's brief for the Continued JDR.

91. On February 6, 2023, Schulz sent another letter to MWR inquiring whether he had found a new lawyer. He also advised, "[w]e w[i]ll be withdrawing as your lawyer on record."

92. On February 9, 2023, Schulz sent a letter to defence counsel serving a Notice of Withdrawal that had been filed on February 7, 2023. According to an affidavit sworn by

a process server on March 5, 2023, she served MWR with a copy of the Notice of Withdrawal on February 13, 2023.

93. MWR testified that he contacted at least 90 lawyers before finding one that would act for him. That lawyer filed a Notice of Change of Representation on March 30, 2023. MWR said that he ended up settling the matter for what he considered to be an unsatisfactory amount relying on a brief he was not happy with, but felt he had to do so. He was almost out of money and close to living on the street by then and he simply wanted to get the matter concluded.

Parties' Submissions

LSA Submissions

Citation 1

94. The LSA argued that Citation 1 was proved: the allegation was that Schulz scheduled a JDR without MWR's knowledge and contrary to MWR's repeated instructions, and the evidence showed that that was exactly what happened. Schulz maintained that MWR had ample notice of the date set for the Continued JDR, but the LSA argued that notice was not the subject of the Citation.

95. In the LSA's submission, MWR was clear and consistent in his instructions, stating repeatedly in writing that he wanted more work done, and that until he was satisfied with the Revised Brief, the Continued JDR should not be scheduled. The LSA reminded the Committee that although Schulz was aware of this, he was of the view that everything that needed to be done was done and the Continued JDR had to be scheduled – particularly in light of Campbell J's directions to return within 90 days of the Initial JDR and the upcoming drop-dead date.

96. The LSA pointed out that despite Schulz's knowledge of MWR's instructions – and despite Schulz's earlier e-mail saying that he needed those instructions "to return to the JDR" – Schulz's office proceeded to take steps to make the booking that same day. This was done not only without MWR's knowledge, but also without checking MWR's availability on the date set. Moreover, Schulz did not advise MWR the date was set until seven weeks later. At that time, MWR immediately objected and said that that was contrary to his repeated instructions. Regardless, Schulz took no steps to cancel the date that had been set and did not suggest any other actions they could take to address the drop-dead rule.

97. The LSA referred to the "Client Instructions" section of the LSA Code of Conduct (Code), as well as a portion of the accompanying commentary:

> 3.2-4: A lawyer must obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer.
>
> [1] Assuming that there are no practical exigencies requiring a lawyer to act for a client without prior consultation, the lawyer must consider before each decision in a matter whether and to what extent the client should be consulted or informed. Even an apparently routine step that clearly falls within the lawyer's authority may warrant prior consultation, depending on circumstances such as a particular client's desire to be involved in the day to day conduct of a matter.

98. Schulz maintained that he had MWR's express authority to schedule the Continued JDR, given the statement in MWR's June 22, 2021 e-mail that, "[t]he timing of the follow up JDR is up to your office". The LSA expressed doubt that MWR intended to provide a "blanket authorization" to Schulz with this e-mail (MWR denied that was his intention in cross-examination at the Hearing), but argued that even if MWR did so in June 2021, his later e-mails were clearly to the contrary. In addition, well after MWR's June 22, 2021 e-mail, Schulz himself referred to the need for MWR's instructions before he could "return to the JDR".

99. Insofar as Schulz felt he had implied authority as counsel to make the booking or had an obligation to do so because Campbell J had directed him to bring the matter back before her within 90 days, the LSA pointed to the Code commentary above, which states that even routine steps may warrant consultation with the client depending on the circumstances, such as the client's desire to be involved. In the LSA's submission, MWR's "prior communications . . . clearly demonstrated his desire to be involved", as he confirmed in his Hearing testimony. Therefore, his "instructions needed to be obtained" and "[t]hey were not".

100. The LSA also questioned Schulz's reliance on Campbell J directing him to bring the matter back before her within 90 days of the Initial JDR, because he did not actually do so for two and a half years. Therefore, the LSA argued, "[t]his obligation ceased to exist except as an excuse".

101. Concerning Schulz's contention that Campbell J only adjourned the Initial JDR for certain limited reasons and his office had addressed those issues by the summer of 2021, the LSA argued that it is irrelevant to Citation 1 why the Initial JDR was adjourned, what Campbell J specifically requested, or whether Schulz felt he had done what was necessary. As LSA counsel phrased it in oral argument at the Hearing:

> What is relevant is to get back before a resumed JDR, the client had to be comfortable with the written materials that were going to be presented at that JDR. And he at no point was comfortable and content with the written materials submitted to him.

102. To the contrary, the LSA argued, MWR wanted revisions including not only the additional evidence and information Campbell J asked for, but also content that would address the concerns raised by the defence at the Initial JDR and corrections to errors that MWR testified he had pointed out to Schulz's office many times.

103. In the LSA's submission, it was "well within [MWR's] rights" to insist on a brief with which he was satisfied, and insufficient and improper for Schulz to have assumed that because he believed he had done what Campbell J wanted, MWR would or should have been content as well and would eventually "come around". Further, it was improper for Schulz to "fail to ensure that [MWR] was first satisfied with the corrections to the errors in the brief and full compliance with what the client wished to claim **before** scheduling a return date as instructed" (original emphasis).

104. In response to Schulz's contention that MWR did not provide instructions – or at least, no "reasonable" instructions – the LSA argued that MWR's instructions "were just not aligned with what Mr. Schulz wanted them to be", so he ignored them. In response to Schulz's contention that he could not "chase a fiction" (presumably, the "fiction" that the Revised Brief still contained errors and omitted relevant information MWR wanted to include), the LSA argued that Schulz should have clarified these matters with MWR. In oral argument, LSA counsel said, "[t]here was hard work to be done by Mr. Schulz's office with a difficult client. And that hard work was never done."

105. The LSA concluded that Schulz's conduct underlying Citation 1 led directly to the conduct underlying Citation 2: the parties were not in agreement on the eve of the filing deadline for the Revised Brief; therefore, Schulz could not file the brief and decided to withdraw from the file immediately.

Citation 2

106. The LSA argued that Citation 2 was also proved, largely by the agreed exhibits in evidence. Schulz withdrew as MWR's counsel on the eve of the filing deadline for the Revised Brief, leaving MWR without counsel at a "very vulnerable time" and forcing him to attend the Continued JDR without counsel and without a brief.

107. The LSA cited sections 3.7-1 and 3.7-6 of the Code, as well as part of the commentary to section 3.7-1, as follows:

> 3.7-1: A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.
>
> [1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should

> complete the task as ably as possible unless there is justifiable cause for terminating the relationship. . . .
>
> [2] An essential element of reasonable notice is notification to the client. . . . No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. . . . the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent other counsel from reallocating time or resources scheduled for the matter in question. . . .
>
> [3] Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the lawyer's obligations. . . .
>
> 3.7-6: When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

108. The LSA conceded that there were grounds for Schulz to withdraw from the file and that that was not in issue. However, counsel argued, "both the manner and the timing of the withdrawal was inappropriate and in direct contravention of the Code", as well as "a marked departure from the standard . . . expected of lawyers".

109. In the LSA's submission, Schulz indicated that he was withdrawing at a critical stage in the litigation, on the eve of a filing deadline and only two weeks before the Continued JDR that MWR had not agreed to in the first place. This could have been avoided because Schulz was aware as early as June 2021 that the relationship was breaking down.

110. In response to Schulz's contention that he could not get instructions from MWR and therefore had no choice but to withdraw when he did, the LSA argued that MWR did not fail to give instructions – he did so repeatedly, in his e-mails, and repeatedly explained why he needed to communicate in that way. Schulz simply characterized those instructions as unreasonable.

111. Moreover, the LSA argued, if Schulz felt there was a disconnect in the instructions, he should have attempted to clarify matters far earlier in his retainer. If it was still impossible for Schulz to obtain instructions he felt he could act on, he should have withdrawn far

sooner than the day before the filing deadline for the Revised Brief. Instead, Schulz simply hoped that MWR would "come to his senses", and "left the withdrawal to the last minute" such that MWR was "left . . . alone and vulnerable at the [Continued] JDR" because there was insufficient time to retain new counsel, no one from Schulz's office attended, and no brief had been filed.

112. The LSA further noted that the manner of Schulz's withdrawal was also a "marked departure" from the standard expected of lawyers because initially, he only sent MWR informal notice in the form of his two January 2023 letters and his February 6, 2023 letter. He failed to show up for the Continued JDR that he had booked even though he was still counsel of record on February 2, 2023, and did not even provide MWR with any guidance in his letters or otherwise as to what MWR should expect or do at the Continued JDR.

113. In response to Schulz's contention that no prejudice was caused by his late withdrawal because the Continued JDR was – as Schulz expected it to be – adjourned, the LSA argued that prejudice is not a required element under section 49 of the *Act*. However, if it were required, the LSA pointed to:

- the waste of court time and resources;
- the waste of opposing counsel's time;
- the risk an adjournment would not be granted;
- MWR's evident distress, as shown by his January 26, 2023 e-mail to all parties and the court;
- MWR's feelings when he had to attend the Continued JDR alone, unrepresented, and without guidance, and had to "make a pitch for an uncertain adjournment";
- opposing counsel learning through MWR's January 26, 2023 e-mail that there was a disconnect between MWR and his counsel and the "potential tactical advantages" this may have provided the defence; and
- the delay in resolving MWR's case, which resulted in him exhausting his financial resources and feeling as though he had no choice but to settle for what he considered an inadequate amount.

114. In sum, the LSA's position was that Schulz failed to provide reasonable notice of his withdrawal, did not follow the proper process, and abandoned his client at a significant juncture without giving him guidance or adequate time to find new counsel. This was

contrary to the Code and sanctionable conduct as defined in section 49 of the *Act* because it would tend "to harm the standing of the legal profession generally".

Schulz's Submissions

Citation 1

115. Schulz disputed the allegation in Citation 1, and contended that it should be dismissed. In his view, it is "without merit" and "completely without foundation" because MWR gave him instructions to schedule the Continued JDR in his (MWR's) June 22, 2021 e-mail when he stated that scheduling was "up to" Schulz's office. In Schulz's submission, that indicated that MWR knew and accepted that scheduling was in Schulz's discretion. Thereafter, Schulz argued, he only required instructions to "return" to the JDR, but not to "schedule" it.

116. Moreover, Schulz argued, MWR was only entitled to notice of the date, and he had six months' notice from Schulz's office once the date was set. It was "*de minimis*" that he did not include MWR in the scheduling discussions with court administration and the defence.

117. Schulz further submitted that in setting a date for the Continued JDR, he was meeting his obligation to the court to obtain certain evidence and then return within 90 days. He was also meeting his obligation to his client by taking necessary steps to avoid the operation of the drop-dead rule. He pointed out that at the Hearing, MWR admitted that he knew Campbell J had ordered them back within 90 days. Therefore, setting a date could not have come "out of the blue" as MWR alleged.

118. As for the contention that MWR implicitly revoked or changed his instructions about scheduling in the months after his June 22, 2021 e-mail, Schulz submitted that there was no reason for him to react by changing or cancelling the Continued JDR date. Everything Campbell J had asked for was ready to go and there remained a concern about the drop-dead date. Schulz acknowledged that there were "some protests" from MWR about the date after it was set, but maintained that scheduling the Continued JDR was not conduct deserving of sanction (discussed further below).

119. In addition, Schulz submitted, his office had obtained and included the information that MWR had wanted in the Revised Brief. MWR's insistence that there were still errors and omissions and other preparatory work to be done was incorrect, incoherent, and unreasonable. Schulz maintained that since no material allegedly missing from the Revised Brief had surfaced during the course of these proceedings, it is "pure fiction" that there was anything that still needed to be done. He "could not chase a fiction and could only do what the Court wanted him to do: book the date to return to the JDR."

120. Schulz also suggested that MWR simply may not have realized or understood that the Initial Brief had been "substantially amended in 2022" to address all of the issues Campbell J had raised. He pointed out that SB sent MWR what Schulz considered an excellent explanatory e-mail on September 22, 2022, but MWR's November 1, 2022 response, setting out eight points he felt still needed to be addressed, was "essentially non-responsive" to SB. In his written submissions, Schulz explained how each of the eight points had already been completed or were duplicative, unclear, or mistaken, and suggested that MWR simply had not understood SB's previous explanations. MWR "would have been satisfied", Schulz contended, "if he understood."

121. There was also some suggestion in Schulz's written submissions that MWR may have understood more than he let on in his testimony at the Hearing. On the one hand, for example, MWR may have been unaware or did not comprehend that the Revised Brief contained everything it needed to, but on the other, MWR may well have understood, but was "determined in his testimony before the Hearing Committee to paint Mr. Schulz in the worst possible light". Similarly, when MWR testified that he felt it would not be productive to go to the Continued JDR with the same information they submitted at the Initial JDR, Schulz wondered if that was actually MWR's view at the time, or simply his recollection at the time of the Hearing.

Citation 2

122. Schulz also disputed the allegation in Citation 2, arguing that it should be dismissed as "without foundation". In his submission, he repeatedly told MWR to get new counsel if he was not happy with Schulz's firm, and his withdrawal caused no prejudice to MWR.

123. Because MWR kept giving "unreasonable" instructions and refused to approve the Revised Brief until the filing deadline came and went, Schulz argued that he had no choice but to withdraw, "reluctantly".

124. In support of his contention that there was "no prejudice to [MWR] whatsoever" as a result of his withdrawal, Schulz pointed to the fact that MWR got the Continued JDR adjourned as Schulz knew he would, found a new lawyer, and eventually settled his claim. In his view, the LSA was simply incorrect that the timing of his withdrawal risked prejudicing MWR's interests, as there were no damages caused, no harm to the client, and no harm to the reputation of the legal profession.

125. In that regard, Schulz argued that there is a significant difference between counsel withdrawing on the eve of a trial and counsel withdrawing on the eve of a JDR. MWR's file was not at a "critical stage" as the LSA alleged. To the contrary, he submitted, "[t]he timing of [his] withdrawal was . . . entirely appropriate and at a time where no prejudice could arise." His office had already met its obligations to the client and the court by

scheduling the Continued JDR and preparing a Revised Brief that addressed the issues raised at the Initial JDR.

126. As to the reason why he waited so long to withdraw given that the issues in the solicitor-client relationship were apparent much earlier, Schulz argued that in his experience, brain injury patients will have "periods of lucidity". He did not withdraw earlier because he was hoping MWR would eventually provide him with "coherent instructions".

Conduct Deserving of Sanction

127. Overall, Schulz characterized this matter as one "that challenges the Hearing Committee to explore the limits of what constitutes conduct deserving of sanction". In his view, the conduct addressed in the Citations did not constitute conduct deserving of sanction.

128. Schulz referred to LSA counsel's use of the word "inappropriate" to describe his actions, and argued that "inappropriate" conduct is not the same as conduct deserving of sanction. In this regard, he cited the decision in *Law Society of Alberta v. Shandro*, 2024 ABLS 14, in which the hearing committee found that Shandro's conduct was "inappropriate" but "did not rise to the level of conduct deserving of sanction" (at para. 209).

129. Schulz also cited *Law Society of Alberta v. Hansen*, 2019 ABLS 4, and *Law Society of Alberta v. Hansen*, 2019 ABLS 23. In the former, the hearing committee observed that good lawyers sometimes make mistakes and found that Hansen had simply made an isolated mistake that did not constitute conduct deserving of sanction (see paras. 31 and 41). In the latter, the hearing committee found that Hansen had again made mistakes that may even have constituted negligence, but still concluded that the conduct at issue did not amount to sanctionable misconduct (at paras. 38 and 42).

130. Schulz further argued that the law sets out a two-step process for determining whether a lawyer's conduct is conduct deserving of sanction: first, a hearing committee must determine whether the citation is made out; second, if the citation is made out, the committee must determine whether the proved conduct is conduct deserving of sanction. He cited *Law Society of Alberta v. Doherty*, 2021 ABLS 18, in which the hearing committee cited section 49 of the *Act* (at para. 54). That section states:

> 49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
>
> (a) is incompatible with the best interests of the public or of the members of the Society, or
>
> (b) tends to harm the standing of the legal profession generally,

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

131. In further support of his argument, Schulz cited James T. Casey, K.C.'s text, *The Regulation of Professions in Canada*, Vol. 1 (2024 Thomson Reuters) at para. 13:2, titled "Test for Conduct Deserving of Sanction":

> The central issue regarding discipline, of course, is whether the professional has been guilty of the type of conduct which the specific statute in question provides is deserving of sanction. There are two lines of cases with respect to who should be considered the notional "Judge" of such conduct. The first line of cases suggests that it should be considered whether the conduct is improper according to "the common judgment of men", whereas the second line of cases suggests that the conduct should be measured by the judgment of the individual's fellow professionals of good repute and competency. It is now generally accepted that the latter test is to be utilized.

132. Casey in turn referred to *Strother v. Law Society of British Columbia*, 2018 BCCA 481. The British Columbia Court of Appeal held that the test for professional misconduct is as follows (at para. 64):

> . . . a hearing panel will consider whether the lawyer's conduct was a marked departure from the conduct expected of lawyers. Put another way, the lawyer's conduct must display culpability of a gross or aggravated nature, rather than a mere failure to exercise ordinary care.

133. As Schulz pointed out, *Strother* was cited in *Gregory v. Law Society of British Columbia*, 2024 BCCA 350 at paras. 68-69. The same court explained that "culpability" means "blameworthiness", not "dishonour" or "intentionality", and that "gross or aggravated" means a marked departure from "acceptable professional conduct" (at para. 69).

134. Schulz also cited two decisions of the Alberta Court of Appeal: *Sussman v. College of Alberta Psychologists*, 2010 ABCA 300, and *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98. In the former, the court held that not every departure from a profession's rules is automatically unprofessional conduct (at para. 54). This was reiterated in *Yee* (at paras. 40-41): a finding of incompetence or lack of skill is not automatically professional misconduct; rather, "[t]here must be an aspect to the unskilled practice that somehow engages the wider reputation of the profession or the protection of the public."

Analysis and Decision

135. The Committee agrees that we must first determine whether each Citation is made out, and then, if so, move on to determine whether the proved conduct is conduct deserving of sanction within the meaning of section 49 of the *Act*.

Citation 1

It is alleged that Martin G. Schulz scheduled a Judicial Dispute Resolution without his client's knowledge and contrary to his client's instructions and that such conduct is deserving of sanction.

136. Based on the written record alone, it is abundantly clear that Schulz scheduled the Continued JDR without MWR's knowledge and contrary to MWR's instructions.

137. At least as early as June 22, 2021, MWR expressed his view in e-mail that he did not want to book the Continued JDR until he was satisfied that they were prepared to attend and make the case he wanted to be made – not when Schulz was satisfied that they were prepared. MWR's position was clearly repeated in numerous subsequent e-mails from June 2021 through to January 16, 2023, shortly before Schulz purported to withdraw from the file.

138. The Committee is not persuaded that when read in its entirety, MWR's initial June 22, 2021 e-mail gave Schulz *carte blanche* authorization to schedule the Continued JDR as and when he saw fit. While it is true that MWR wrote, "[t]he timing of the follow up JDR is up to your office", the rest of the e-mail – including the phrase that followed to complete that very sentence – clearly qualified the statement to indicate that such timing depended on when further preparation was completed to MWR's satisfaction. MWR stated in part:

> I fail to see how we can be talking about a follow up JDR meeting when none of the items brought up by the defense in the first JDR have been addressed by your office. . .
>
> I would assume that someone from your office made a list of outstanding items from the last JDR, as I did. I will forward some of my list again in hopes that some work can be done gathering information to address these outstanding issues. I have talked about the vast majority of these items before but so far, I have seen no progress. As I have repeatedly said before, without addressing items left over from the first JDR, I see no reason to schedule another JDR meeting. The timing of the follow up JDR is up to your office and determined by when we have the information

> required to justify a follow up JDR meeting without be[ing] embarrassed as at the first JDR meeting.
>
> A few days on October 6, 2020 [sic], after the first JDR which was October 1, 2020, I received a phone call from your office wanting to book another JDR. I was surprised as there had been no work put into addressing the issues the defense raised at the first JDR. I said we needed to do that first. I addressed the income concerns, the WCB concerns, and the hearing aid concerns. As far as I know, your office addressed none of the concerns. Now I am being told that another JDR is planned and none of the concerns have yet been addressed. It is 9 months since the first JDR with no progress at gathering information. [emphasis added]

139. Moreover, even if the phrase, "[t]he timing of the follow up JDR is up to your office", was ambiguous or could be construed as giving Schulz instructions to address scheduling as he wished, the many e-mails from MWR that followed were unambiguous and clear: do not set a date for the Continued JDR until I am satisfied we are prepared.

140. There are also indications in the evidence that despite receiving an e-mail from MWR stating that, "[t]he timing of the follow up JDR is up to your office", Schulz and his associate, SB, knew that they still needed the client's instructions. As mentioned, SB's correspondence with court administration about scheduling the Continued JDR before Campbell J was continued in September 2021. Court administration offered a date in early October 2021, and when asked to confirm the date, SB replied, "I have reached out to our client but haven't got confirmation yet." Also as mentioned, when scheduling discussions resumed in the first half of 2022, on June 15, 2022, Schulz e-mailed MWR to say that he "need[ed] to get instructions from [MWR] to return to the JDR".

141. The Committee is not persuaded by Schulz's argument that he did not mean "schedule the JDR" when he told MWR that he needed instructions to "return to the JDR". We are of the view that they are, as the LSA argued, tantamount to the same thing in this context, with this client, and would be construed as such by the average reader – especially a reader who knew that no date had yet been set. If Schulz meant something else, there are many ways he could have made that clear to his brain-injured client.

142. Nevertheless, within half an hour of Schulz's June 15, 2022 e-mail to MWR and in the absence of instructions to do so, Schulz's office was back in touch with court administration seeking a date for the Continued JDR. MWR was not copied, consulted, or advised that this step was being taken, even after he wrote to Schulz again the very next day to repeat his instructions. When the date was set and confirmed by court administration on July 5, 2022, MWR was still not copied, consulted, or advised. When

SB wrote to MWR (copying Schulz) on July 19, 2022 to tell him that she was working on the Revised Brief, MWR was still not advised of the Continued JDR date.

143. Clearly, the Continued JDR was scheduled without MWR's knowledge and contrary to MWR's written instructions, as alleged. As Schulz admitted at the Hearing, MWR was not advised of the date until late August 2022 – even though SB had an opportunity to do so at least as early as July 19, 2022, when she e-mailed MWR about the Revised Brief. The Committee is therefore of the view that staff vacations do not excuse the seven-week delay.

144. The Committee is also unpersuaded by Schulz's explanation that MWR was not consulted about his availability for the Continued JDR on February 2, 2023 because Schulz knew MWR was not working and thus concluded that he was "available all the time". There are many other obligations that MWR could have had booked that day that do not involve work. Certain medical appointments, for example, have to be booked many months in advance.

145. As mentioned, Schulz argued that MWR was only entitled to notice of the Continued JDR date, and he had six months' notice once the date was set. The basis for the assertion that MWR was only entitled to notice was unclear. If it was that MWR gave Schulz instructions to proceed with scheduling in his June 22, 2021 e-mail, we have already addressed that argument. If it was that as counsel, Schulz had implicit authority to take certain steps in the litigation without confirming them with his client beforehand and thus did not need MWR's instructions, we agree with the LSA's interpretation of section 3.2-4 of the Code and its commentary in the context of this file, with this client. MWR was clear, in writing, about his desire to be involved in both preparing for and scheduling the Continued JDR. It is true that a lawyer may have implied authority in some instances, but in this instance, Schulz acted in the face of clear instructions to the contrary.

146. In any event, whether MWR had ample notice of the date Schulz set for the Continued JDR is not the subject of Citation 1.

147. Schulz indicated that he felt he had to take action and get a date for the Continued JDR because of Campbell J's apparent direction to return within 90 days of the Initial JDR, and because by at least April 26, 2022 (the date SB first mentioned it in an e-mail to MWR), his office was becoming concerned about the drop-dead date in October 2023. The Committee finds both of these explanations unpersuasive.

148. Even by March 11, 2021, the earliest date in the evidence that SB reached out to court administration to seek Campbell J's available dates for the Continued JDR, the parties were already well beyond the 90 days specified. While we are aware that some evidence – for example, MWR's June 22, 2021 e-mail – suggests that scheduling the Continued

JDR was discussed as early as the week following the Initial JDR in October 2020, the point remains the same: Campbell J's deadline was not met. It is therefore difficult to understand why it later became imperative to meet a deadline that had already passed months before.

149. As for the drop-dead date in October 2023, it was still nearly a year and a half away from April 26, 2022, and a year and a quarter away from July 5, 2022, the date court administration confirmed that the Continued JDR was scheduled for February 2, 2023. There remained plenty of time for a different step to be taken in the litigation, and plenty of time to address MWR's concerns and get his approval to set a date.

150. However, it was abundantly clear from the evidence and argument that Schulz did not think MWR's concerns had any merit – which was the reason he cited for not taking steps to adjourn or reschedule the February 2, 2023 date when MWR objected. Schulz was of the view that they had addressed the points Campbell J asked them to, nothing further was required, and MWR's requests for additional preparation and information were unreasonable, unnecessary, and perhaps beyond the scope of a JDR, if not based on a "fiction". In Schulz's view, MWR "would have been satisfied if he understood." *

151. It is within the realm of possibility that Schulz was correct about this, and MWR would have been in agreement with Schulz's actions if he had had a better understanding of the process and what was required. But it is Schulz who had the responsibility as MWR's legal representative to make the effort to try and ensure that MWR understood. Perhaps he intended to do just that when he continued to ask MWR for a meeting or a telephone call – indeed, he testified at the Hearing that he had had luck in the past getting MWR to "come around" and accept his legal advice if they spoke in person.

152. The problem Schulz faced is that by at least June 2021, MWR wanted to communicate in writing. He clearly explained his reasons for this, and in the Committee's view, his reasons were sound. Even if the reasons were nothing more than that it was his personal preference, however, as the client, he was entitled to direct the manner in which his counsel communicated with him.

153. The Committee understands that writing lengthy e-mails to MWR addressing each of his questions and concerns may have been time-consuming, cumbersome, and perhaps frustrating for Schulz and his associate, but that is what this client required. If Schulz found this impossible, or tried to do so and still failed to get through to MWR to their mutual satisfaction, it was incumbent on him to get off the record much earlier than he did. As the LSA argued, it does not matter to the Citation whether Schulz was satisfied

* The Committee is not persuaded by Schulz's suggestions that MWR may have understood more at the time in question than he let on in his evidence at the Hearing. We found MWR's testimony credible and reliable despite the limitations imposed by his brain injury and the passage of time, and it was consistent with the written correspondence in evidence.

everything was ready for the Continued JDR and they could proceed – MWR was not. Schulz needed to do the work to address that and not simply sit back hoping that eventually MWR would have a "period of lucidity" and "come around" to Schulz's way of thinking.

154. Instead, the evidence shows very little effort on Schulz's part to provide the detailed explanations and information MWR clearly sought. Simply repeating that it is "in the brief" or that "we have done everything Campbell J wanted" or that "this is why we want to set up a meeting" was clearly insufficient for this client. SB made a few attempts to provide somewhat longer explanations concerning certain issues by e-mail – most notably, in her e-mails of September 22, 2022 and January 13, 2023 – but they were still insufficient for this client. In the case of the January 13, 2023 e-mail and those that followed on January 16, 2023, they were both insufficient and too late.

155. In *Law Society of Alberta v. Bright*, 2015 ABLS 5, the hearing committee found that Bright not only failed to follow his client's instructions, he also acted directly contrary to those instructions. The committee held (at paras. 37 and 41):

> Clients are entitled to make decisions about strategy, priorities and direction and, provided those decisions are lawful, the lawyer must heed those instructions and take the litigation in the direction that the client wishes. This is so irrespective of whether the lawyer is of the view as to the best or most effective strategy. If a lawyer disagrees with the instructions he or she is receiving from a client, then that disagreement has to be dealt with between the lawyer and client. Ultimately, if the lawyer is unable to convince the client of the wisdom of following his or her suggested course of action, then the lawyer may be entitled to withdraw and have the client seek alternate representation. A lawyer is not entitled simply to substitute his judgment for that of his client. A lawyer must heed their client's instructions.
>
> . . .
>
> The Hearing Committee is of the view that this is conduct deserving of sanction. One of the very fundamental aspects of the lawyer-client relationship is that the lawyer must follow the client's instructions, unless those instructions are unlawful. In no circumstance is the lawyer entitled to substitute his or her own decision on a matter, even where the lawyer is of the view that those instructions are not in the client's best interests.

156. We would adopt these comments in this matter. MWR gave clear and consistent instructions to Schulz concerning scheduling the Continued JDR, but Schulz was of the view that those instructions were incoherent, unreasonable, and mistaken. Schulz therefore proceeded to take steps that he felt were appropriate in the circumstances, but that he was not authorized by his client to take, and he took them without his client's

knowledge and contrary to his client's instructions. MWR was eventually given notice of those steps well in advance of scheduled date, but that did not cure or erase Schulz's previous conduct.

Citation 2

It is alleged that Martin G. Schulz failed to provide reasonable notice of his withdrawal from representation of his client and that such conduct is deserving of sanction.

157. Again, based on the written record alone, it is clear that Schulz did not provide MWR with reasonable notice of his withdrawal. While the Committee agrees with the LSA that MWR was a more difficult client than some and that Schulz had a reasonable basis for withdrawing, he did not so in accordance with his obligations under the Code.

158. According to Rule 2.29 of the Alberta *Rules of Court*, a lawyer's withdrawal as counsel of record does not take effect until 10 days after an Affidavit of Service is filed that attests to service on the client (and any other parties) of a filed Notice of Withdrawal in the prescribed form.

159. As discussed, although he did not file a Notice of Withdrawal until February 7, 2023 or serve it on MWR until February 13, 2023, Schulz purported to withdraw by way of a series of letters in January and early February 2023. The first letter was dated January 18, 2023, a day before the Revised Brief was due to be filed for the Continued JDR two weeks later.

160. Section 3.7-1 of the Code was set out previously, along with a portion of its commentary. It requires that a lawyer not withdraw unless there is good cause and reasonable notice is given to the client. The commentary states that although there are no "hard and fast rules" as to what constitutes "reasonable notice", the lawyer "should protect the client's interests", "not desert the client at a critical stage of a matter", or "put the client in a position of disadvantage or peril". Generally, the client should have enough time to "retain and instruct replacement counsel", and the withdrawal or contemplated withdrawal should not "waste court time or prevent other counsel from reallocating time or resources".

161. Schulz denied that the day before a court-imposed filing deadline and two weeks before a scheduled JDR was a "critical stage" of MWR's matter. The Committee disagrees. Even though it was a mediation process at issue and not a trial, at the time, a JDR (or another form of mediation) was a required step before a matter could be set for trial. It required court resources and imposed a court-driven process with deadlines that the parties were required by the court to follow.

162. Not only was this a critical stage in the matter, the timing of Schulz's withdrawal made it extremely difficult – if not impossible – for MWR to retain and instruct replacement counsel who could meet the filing deadline and get up to speed on the file quickly enough to provide effective representation at the Continued JDR.

163. Schulz maintained that he "knew" that all MWR would have to do is show up at the Continued JDR on February 2, 2023, request an adjournment because he was without counsel, and he would get one. The Committee finds that even if this was a likelihood, it was not a certainty – especially since, as Schulz was aware, defence counsel had already stated that his client would not consent to an adjournment.

164. Schulz therefore put MWR in a position of potential disadvantage or peril: MWR could have been required to proceed alone, without counsel, without a filed brief, and without having seen the defence's brief (as mentioned, Schulz's office did not send the defence brief to MWR until the day after the Continued JDR date). Further, Schulz failed to provide MWR with any guidance as to whether the Continued JDR would proceed as scheduled, what he should expect, or what he should do when he got there given the circumstances.

165. Even more egregious in our view was Schulz's failure to attend the Continued JDR before a justice of the Court of King's Bench when he was still counsel of record, without providing any party any notice that he was not going to attend. This is especially so when court administration reminded him by e-mail on January 19, 2023 that he was still counsel of record if no Notice of Withdrawal had been filed or served, and that she was concerned the assigned justice might waste time reading file material unnecessarily.

166. Section 3.7-6 of the Code was also set out previously in this decision. That section requires that when withdrawing, a lawyer must try to "avoid prejudice to the client". Schulz denied that MWR was prejudiced because he got the adjournment Schulz expected, but we agree with the LSA that this ignores several aspects of prejudice or potential prejudice to MWR, not to mention the impact on and inconvenience caused to the court, the defence, and its counsel. This includes:

- the obvious risk that the adjournment would not be granted;
- the position in which Schulz left his vulnerable, brain-injured client on the eve of the Continued JDR, and the additional anxiety that would have caused MWR;
- failing to give MWR any guidance as to what he should do, which likely contributed to MWR's decision to include court administration and opposing counsel on his January 26, 2023 e-mail – an e-mail that disclosed confidential information and could have affected his position in the litigation; and

- the resulting delay in resolving the matter, which may have increased the pressure on MWR to settle his claim for less than he was entitled to receive.

167. In addition, precious court time and resources were wasted when other litigants likely could have used them or the presiding justice could have been reassigned. The defence was put to unnecessary time and expense preparing, and defence counsel could have used his time for other matters. It is especially baffling that Schulz was not more careful to ensure he attended the Continued JDR before a member of the court given that he cited his concern about Campbell J's 90-day return direction as one of the reasons he felt he had to schedule the Continued JDR despite his client's instructions.

168. Again, this is not to say that Schulz did not have reason to withdraw. However, he could and should have done so much earlier, following the process mandated by the Alberta *Rules of Court*, and not on the eve of a filing deadline, just two weeks before a court proceeding. Although we disagree that MWR failed to communicate with Schulz or provide instructions for the reasons discussed previously, it was evident as early as June 2021 that the solicitor-client relationship was breaking down.

169. Relying on the correspondence he sent to MWR on June 23, 2021, October 6, 2021, and June 15, 2022, Schulz contended that MWR had ample notice of his intention to get off the record, and should not have been surprised by his January 18 and January 25, 2023 letters. We disagree. Threatening to withdraw is not the same as withdrawing. Moreover, the fact that Schulz threatened to withdraw several times but did not do so likely inured MWR to the possibility Schulz would eventually carry through – as MWR testified at the Hearing.

Conduct Deserving of Sanction

170. Having found that both Citations were proved, we now consider whether the conduct referenced is conduct deserving of sanction.

171. As set out in the law discussed previously, section 49 of the *Act* states that conduct deserving of sanction is that which is incompatible with the best interests of the public or the members of the LSA, or that which would tend to harm the standing of the legal profession generally. As set out in the Casey text, in this case, that determination must be made by this Committee, comprised of a panel of Schulz's "fellow professionals of good repute and competency".

172. Stated another way based on the guidance provided by the British Columbia and Alberta Courts of Appeal, we must determine whether Schulz's conduct was "a marked departure from the conduct expected of lawyers" or from "acceptable professional conduct". Finding incompetence or lack of skill alone is insufficient – it must be conduct

that “somehow engages the wider reputation of the profession or the protection of the public”.

173. The Committee has no hesitation in concluding that Schulz’s conduct as described in the Citations is conduct deserving of sanction.

174. As alleged in Citation 1, Schulz scheduled the Continued JDR without MWR’s knowledge, contrary to MWR’s express written instructions. This was not attributable to negligence, an understandable oversight, or a mere misunderstanding or miscommunication. It was not a clerical error and there was no ambiguity in the instructions. MWR was clear and consistent in his repeated written communications: prepare to my satisfaction, and then schedule the session once I am satisfied.

175. However, Schulz did not agree with these instructions, and he therefore deliberately decided to act as he saw fit. Then, even after MWR became aware of what happened and objected, Schulz deliberately decided not to do anything to rectify the situation and bring himself into compliance with his client’s wishes.

176. Clients hire lawyers to represent them and give them advice. It is not controversial to say that in the normal course, clients expect to be in charge of the service relationship – to listen to the advice given, decide whether or not to follow that advice, decide on a course of action, and then give instructions that will be followed (subject to a lawyer’s legal and ethical obligations). Once hired, lawyers expect to give advice on which their clients can base their decisions and give instructions the lawyer must follow (again subject to the lawyer’s legal and ethical obligations), even if those instructions are not in accordance with the advice given or the lawyer’s own thoughts as to the best way forward. If a lawyer cannot follow the instructions given for whatever reason, it is incumbent on the lawyer to withdraw from representation in a reasonable manner that protects the client’s interests.

177. We have no doubt that the public would be shocked to find out that despite giving legal and ethical instructions, if the lawyer they hired was of the view that another way was better, the lawyer could unilaterally decide not to follow those instructions and take a different course of action instead. The public would also be shocked to find that a lawyer might do this without their knowledge, without advising them promptly, and without taking any steps to reverse course and comply with the instructions given.

178. We are of the view that this is a marked departure from the conduct expected of lawyers that would undermine the public’s trust and confidence in the legal profession. That trust and confidence is essential to the lawyer-client relationship – without it, members of the public may be reluctant to retain, confide in, and rely on legal counsel at some of the most vulnerable times of their lives. Eroding it is therefore contrary to the public’s interest and the profession’s interest in maintaining its integrity and reputation.

179. In short, like the hearing committee in *Law Society of Alberta v. Engelking*, 2016 ABLS 30, we do not believe that Schulz acted with malice in scheduling the Continued JDR despite MWR's instructions, "but his actions demonstrated a serious failure in client service and failure to follow clear written instructions" (at para. 11). Without deciding the point, we accept that proceeding to book the Continued JDR may have been the preferable approach in a different case with a different client. However, in these circumstances, it was not open to Schulz to ignore his client and make that decision unilaterally.

180. As alleged in Citation 2, Schulz failed to provide reasonable notice of his withdrawal from representing MWR. Again, his decision to do so when he did and in the manner he did was deliberate. He has been a member of the Alberta bar for 35 years and acknowledged that he knew that a Notice of Withdrawal was required, that a Notice of Withdrawal does not have immediate effect, and that he was still on the record on February 2, 2023, the date he set for the Continued JDR. His actions were not attributable to negligence, oversight, misunderstanding, miscommunication, or clerical error.

181. To the contrary, the timing and manner of Shulz's withdrawal in this matter is virtually a case study in how a lawyer must not withdraw: on the eve of a filing deadline, without filing and serving a Notice of Withdrawal, and without showing up before a justice of the Court of King's Bench at an appearance he scheduled while he was still counsel of record for a vulnerable, brain-injured client.

182. Again, the Committee considers the public interest and the reputation and standing of the legal profession in drawing the conclusion that the timing and manner of Schulz's withdrawal was a marked departure from acceptable professional conduct. We have no doubt that the public would be shocked to learn that their lawyer might suddenly decide to cease to act at an important juncture in a lawsuit or transaction. They would also be shocked to learn that their lawyer might do so with little notice in a manner that failed to comply with the requirements of the Alberta *Rules of Court*, leaving them insufficient time to retain and instruct replacement counsel before a scheduled step in the file.

183. Again, the Committee is of the view that the prospect of this occurring would undermine the public's trust and confidence in the legal profession, with the negative impact on both the public and the profession already discussed. The *Rules of Court* establish a process and timeline for lawyers to follow when seeking to withdraw, and the Code sets out the relevant practical and ethical considerations. They do so because of the potential consequences to clients, the courts, and other parties that may result from a lawyer's poorly-timed withdrawal. They also do so to ensure that clients' interests are properly protected.

184. As mentioned, in the course of closing submissions, Schulz seized on LSA counsel's use of the word "inappropriate" to describe his actions, arguing that "inappropriate" conduct is not the same as "conduct deserving of sanction", and citing the *Shandro* decision from 2024 in support.

185. The Committee does not find that anything turns on the fact that LSA counsel described Schulz's conduct as "inappropriate" at some point or points during this proceeding. The Citations are clear that the LSA was alleging that the referenced conduct was "conduct deserving of sanction". Moreover, LSA counsel was also clear that she was arguing that Schulz's conduct was "a marked departure" from what is expected of Alberta lawyers.

186. The Committee also notes that while the committee panel in *Shandro* found that Shandro's conduct was "inappropriate" but "did not rise to the level of conduct deserving of sanction" (at para. 209), it did not suggest that any conduct that may be described as "inappropriate" – euphemistically or otherwise – cannot be conduct deserving of sanction.

Concluding Matters

187. The Committee has found that the Citations have been proved on a balance of probabilities and that Schulz's conduct is deserving of sanction.

188. Accordingly, the Committee will reconvene for the sanction phase in this matter.

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

Dated March 4, 2026.

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Deanna Steblyk, KC

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Troy Couillard