THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

PAUL SYDNEY VYAMUCHARO-SHAWA
(the "Member")

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Dates:	October 7, 8, 9, 10, 11, 21, 22, 28, & 29, November 18, December 10 & 11, 2024, & March 3 & 4, & May 26, 2025
Panel:	Dean Scaletta (Chair) Maureen Terra (Practising Member) David Rondeau (Public Representative)
Counsel:	Rocky Kravetsky & Ayli Klein for the Law Society of Manitoba ("the Society") Jean-Rene Dominique Kwilu for the Member

REASONS FOR DECISION

Introduction

1. Mr. Vyamucharo-Shawa (also referred to in the materials and in this proceeding as "Mr. Shawa" or "the Member") has been a member of the Society since 1989. He is 67 years of age.

2. The Member was charged in a citation dated May 26, 2022 (File No. 22-007-DIS) ("Citation 1") with:

   (a) failure to be courteous and civil and act in good faith with another member of the Society and their staff, contrary to Rule 7.2-1 of the *Code of Professional Conduct* ("the *Code*"); and,

   (b) failure to fulfill an Undertaking to the Society, contrary to Rule 7.2-11 of the *Code* ("the Brown Complaint").

3. The Member was charged in a citation dated February 26, 2024 (File No. 24-003-DIS) ("Citation 2") with:

   (a) failure to carry on the practice of law and to discharge all of his responsibilities to his client, the Court, the public, and other members of the profession honourably and with integrity, contrary to Rule 2.1-1 of the *Code;*

   (b) failure to treat the Court with candour, courtesy, and respect, contrary to Rule 5.1-1 of the *Code*;

   (c) failure to be courteous and civil and act in good faith with all persons with whom he had dealings, contrary to Rule 7.2-1 of the *Code*;

   (d) recording conversations between himself, his client, and other lawyers without first informing the participants of his intention to do so, contrary to Rule 7.2-3 of the *Code*; and,

   (e) sending correspondence that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer, contrary to Rule 7.2-4 of the *Code* ("the Rempel Complaint").

4. The Member was charged in a citation dated March 13, 2024 (File No. 24-008-DIS) ("Citation 3") with failure to carry on the practice of law and to discharge all of his responsibilities to his former client, the Court, the public, and other members of the profession honourably and with integrity, contrary to Rule 2.1-1 of the *Code* ("the C Complaint").

5. An in-person hearing was held on the dates noted above.

6. The jurisdiction and composition of the panel, the valid service of the Citations on the Member, and his membership in the Society, were all admitted. Initially, there were no objections to any of the panel members on the basis of either bias or conflict.

   In November, 2024, an oral motion was brought by the Member seeking the recusal of the Chair and the disbanding of the panel. The motion was dismissed in an oral decision delivered by the Public Representative.

   In December, 2024, a formal motion for the same relief was brought. Materials were filed and submissions were made. In a written decision dated December 10, 2024 (*The Law Society of Manitoba v Paul Sydney Vyamucharo-Shawa*, 2024 MBLS 10), the motion was dismissed.

A Notice of Appeal was filed with the Manitoba Court of Appeal on December 11, 2024 (File No. AI24-30-10152). On December 16, 2024, a Notice of Motion seeking short leave, leave to appeal, and a stay of these proceedings pending the outcome of the appeal was filed, along with supporting materials. The motion was denied by a Chambers judge on December 19, 2024, and the appeal was later discontinued.

7. At the outset of the hearing, the Member declined to waive the formal reading of the Citations, and the Chair then read the Citations into the record. The Member then entered pleas of not guilty to each Citation.

Preliminary Matters

Motion for Issuance of Subpoena

8. On September 5, 2024, Ms. Heather Leonoff, K.C., the Independent Chair of the Discipline Committee, issued a written decision (*The Law Society of Manitoba v Paul Sydney Vyamucharo-Shawa*, 2024 MBLS 7) in response to a motion brought by the Member for the issuance of a subpoena to compel the attendance of Mr. Justice Rempel of the Manitoba Court of King's Bench to testify at this hearing. The Society opposed the motion, taking the position that Justice Rempel was neither competent nor compellable as a witness.

9. The motion was dismissed, but not without some comments from Ms. Leonoff on the scope of this proceeding and on the constitutional imperatives underpinning the judicial immunity from testifying about the acts of judges *as* judges.

10. At paras. 17-20, Ms. Leonoff noted:

    (a) this discipline hearing would focus on the conduct of the Member;

    (b) Justice Rempel and the Court of King's Bench "have nothing to answer for";

    (c) this discipline hearing "is not a forum to resolve a legal question regarding King's Bench procedure";

    (d) "The issue that the discipline panel will consider in this case is how the member chose to deal with a [judicial] decision with which he disagreed"; and,

    (e) "... a subpoena will not be issued for the purpose of having Justice Rempel answer any questions regarding the court policy. Such evidence is entirely irrelevant and inadmissible."

11. At paras. 31-35, Ms. Leonoff writes:

    (a) "Judicial immunity from testifying is a well-established constitutional principle, dating back centuries;" and,

    (b) "The immunity from testimony is not the judge's to waive. It exists to protect the administration of justice and the constitutional principle of judicial independence."

12. At paras. 36-40, she writes:

    (a) "I do not accept that there is an exception to judicial immunity in the face of bad faith or malice allegations"; and,

    (b) "There is a strong policy reason for not recognizing any exceptions to testimonial immunity for actions taken by judges *qua* judges. ... Judicial independence, which is a cornerstone of our constitutional democracy, is too important to allow it to be undermined by requiring testimony on allegations of improper conduct."

13. At paras. 42-47, Ms. Leonoff concludes:

    (a) "Judges play an important role in helping the Law Society in fulfill [its statutory] mandate. Judges regularly encounter lawyers and may become aware of ethical issues or competence issues. Alerting the Society then permits [it] to deal with the complaint in accordance with its ordinary practices"; and,

    (b) "Having made the complaint, the judge should not have any further involvement in the Law Society matter. There should be no follow-up or questions by the Society directed to the judge. ... Justice Rempel was right in declining to respond to any Law Society correspondence after his initial complaint. Since the judge is immune from testifying, the Law Society must always be cognizant that any disciplinary action it chooses to take must be taken without any further involvement by the judge."

Motion to Have a Binder of Documents Admitted into Evidence

14. Counsel for the Society sought to have a tabbed binder of documents, compiled in accordance with three Requests to Admit (one for each Citation) and the responses provided by counsel for the Member, entered as an exhibit in the cause. Counsel for the Member demurred, and submissions were made on behalf of both parties. The panel recessed to consider the submissions; upon resumption of the hearing, the Chair read the following decision into the record:

"The Society has prepared a binder of documents primarily consisting of communications (letters and emails) sent by or received by the Member.

The 'authenticity' of the documents in the binder has been admitted by the Member. (Documents where the authenticity was not admitted have been removed.)

King's Bench Rule 51.01 provides a non-exhaustive definition of the term 'authenticity', which has been reproduced and expanded upon in each of the Requests to Admit tendered by the Society.

In each response, the Member specifically does not admit the interpretation, relevance, or weight of any of the documents.

The Society concedes this point, but maintains that the binder and each individual document is nonetheless and necessarily in evidence in the cause.

Several of the charges allege that specific phrases were set out in letters prepared by the Member. Absent any misquotes, the fact of those statements being made are established by the admissions of authenticity.

Whether any of the statements constitute a breach of the provisions of the *Code* [of Professional Conduct] cited is a matter of interpretation (which, as noted, the Member does not admit).

The panel therefore directs that the binder, in its entirety, be entered as Exhibit 4 in the cause."

Motion to Have Certain Documents Vacated From the Evidence in the Cause

15. Counsel for the Member immediately brought an oral motion seeking to have the documents numbered 73 through 83 in Exhibit 4 (all of which relate to Citation 2) "vacated from the evidence in the cause". He stated that he was "afraid the chair is allowing the Law Society to circumvent a basic rule of procedural fairness" by allowing the impugned documents to be entered into evidence in the cause. Because the Chair of the Discipline Committee had already determined that Justice Rempel is a not a compellable witness in these proceedings, the Member "cannot confront the person who made the complaints against him" by, for example, cross-examining him before the panel. After a brief submission on behalf of the Society, and a brief rebuttal by counsel for the Member, the motion was denied with written reasons to follow.

16. These are those reasons.

The decision of the Chair of the Discipline Committee sets out a clear and concise explanation of why a judge who has lodged a complaint against a member of the Society cannot be a compellable witness in any contested discipline proceedings which may follow. The judge makes their complaint in writing (as required by *The Legal Profession Act* and the *Rules* of the

Society), and it is then up to the Society to take whatever disciplinary steps it deems appropriate.

If the Society is barred from considering both the complaint from the judge and the explanation offered by the member that the complaint is about, it cannot fulfill its statutory mandate to: (a) "uphold and protect the public interest in the delivery of legal services with competence, integrity and independence", and (b) "regulate the practice of law in Manitoba". To accept and endorse the position advanced by the Member on this point would handcuff the Society in the conduct of proceedings which go to the very core of why it exists; its *raison d'être* as it were. Carried to its logical conclusion, such a principle would require – in cases where the complainant is a judge – that the Society abdicate its responsibilities by simply doing nothing. This cannot be right.

There is no reason to exclude a letter from the evidence a panel is able to consider simply because there exists a constitutional prohibition on having its author cross-examined on its contents at a public professional discipline hearing. While the Member cannot directly challenge the statements made by the judge in the letter, he is: (a) free to testify as to his own version of the events, (b) free to challenge the interpretation of the letter posited by the Society, and (c) free to challenge the applicability of the *Code* provisions which the Society asserts come into play in assessing his conduct. [Note: Mr. Vyamucharo-Shawa has, in fact, done all of these things during the course of this hearing.]

On the specific point of the "assent or knowledge of the presiding judge", there is nothing in the letter to the Society dated May 12, 2023 (Exhibit 4, Tab 74) that is objectively controversial. Justice Rempel writes: "I was taken aback by your admission that you had indeed recorded our discussion that day [March 20, 2023] without notice to me or to Mr. Mandzuik." Even the most withering of cross-examinations is not going to elicit a retraction of that basic premise of the complaint, and is unlikely to prompt a sudden concession that the judge really *did* know the surreptitious recording was underway; there is simply no likelihood of that happening.

Where a citation is based upon the actual wording of a letter, the authenticity of which has been established, it runs contrary to the principles of proportionality and efficiency to exclude it from the evidence before a discipline panel, and it makes no sense to do so just because the maker cannot be compelled to testify.

The panel is alive to the reality that these proceedings may have serious consequences for the Member; his very ability to continue his practice of law is potentially at risk. But the allegations in Citation 2 are not complex,

nor is the evidence which the Society has said it plans to lead to support it. In fact, a number of the charges in Citation 2 are based entirely on his own words, set out in letters he sent to the judge and to the Society.

Relevant Statutory Provisions

17. *The Legal Profession Act*
Sections 3(1), 3(2)(b), 72(1)(c)(ii), & 72(1)(e)

18. *Code of Professional Conduct*
Preface (excerpt), Rule 2.1-1 and Commentary [1], [2], & [3], 5.1-1, 7.2-1, 7.2-3, 7.2-4, & 7.2-11and Commentary [1], [2], [3], [4], [5], & [6], & Rule 6.1-1

19. *Law Society Rules*
Rules 5-79(1), 5-79(2), 5-96(5), 5-96(7), & 5-96(8)

20. *Court of King's Bench Rules*
Rules 50.01 (2), 50.05(2), 50.05(3), 50.05(5), 50.05(5), 50.06(3), 50.08(1), 50.08(2), 50.08(5), 50.08(7), 50.09(1), 50.09(2), 50.09(3), 50.09(4), & 51.01

21. The full text of these provisions are reproduced in Appendix "A" to these Reasons.

Relevant Authorities and Principles

The Modern Approach to Statutory Interpretation

22. *Buhr v Buhr*, 2021 MBCA 63 is a relatively recent decision of the Manitoba Court of Appeal which discusses what has come to be known as "the modern approach to statutory interpretation". The relevant principles are succinctly set out at Para. 32 which reads, in part:

> [32] Interpretation of court rules is governed by the same principles as the interpretation of other legislation. ... The modern approach to statutory interpretation requires that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the Legislature]" (*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para. 21, quoting Elmer A Driedger, *Construction of Statutes, 2nd ed* (Toronto: Butterworths, 1983) at 87; see also *Manitoba Housing v Amyotte et al*, 2014 MBCA 54 at paras. 50-51).

Purposes of Professional Discipline

23. The panel is indebted to prior discipline panels which have articulated the guiding principles applicable to cases such as this one:

(a) The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain

high professional standards, and preserve public confidence in the legal profession.

The Law Society of Manitoba v Nadeau, 2013 MBLS 4, citing *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012

(b) The most fundamental purpose of professional discipline is to maintain the reputation of the legal profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.

The Law Society of Manitoba v Nadeau, 2013 MBLS 4, citing *Bolton v. The Law Society* [1993] EWCA CIV 32

Professional Misconduct

24. An old, but still useful, definition of "professional misconduct" was articulated by the Ontario Court of Appeal in *Re: Davidson and Royal College of Dental Surgeons of Ontario*, 1925 CarswellOnt 254:

> If it is [shown] that a member of the college, in the pursuit of his profession, has done something with respect to it which would be reasonably regarded as improper by his professional brethren, of good repute and competency, then it is open to the board of directors of the college to decide that he has been guilty of improper conduct in a professional respect.

25. More recently, the British Columbia Court of Appeal formulated its own articulation of the test in *Strother* v. *Law Society of British Columbia*, 2018 BCCA 481 (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.

Fundamental Importance of Integrity

26. "Integrity is the foundation of the legal profession. It is the first rule in the *Code of Professional Conduct* and every other rule is based upon it. ... Without this level of trust, the profession cannot function."

The Law Society of Manitoba v McKinnon, 2010 MBLS 5

27. "Much has been written on the importance of integrity as the foundation of the profession. The integrity of counsel allows for efficient and honest transactions to occur; it is essential for our legal system to operate and it goes squarely to the question of public confidence in the profession.

Integrity is not simply the absence of deceit. It is the positive and uncompromising commitment to uphold certain values and principles. It is

the existence of a positive force; not the absence of a negative force."

Law Society of Alberta v Ingimundson, 2014 ABLS 52, at paras. 34 and 35

Assessing Credibility / Desirability of Corroborating Evidence in Civil Cases

28. "The credibility of interested witnesses ... cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, *the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions*." (Emphasis added.)

Faryna v. Chorny, [1952] 2 D.L.R. 354 (B.C.C.A.), p. 357
Hopaluk v. Transx Ltd., 1998 CanLII 17669 (MBCA) at para. 8

29. "This is how I go about the business of finding facts. I start from the undisputed facts which both sides accept. I add to them such other facts as seem very likely to be true, as, for example, those recorded in contemporary documents or spoken to by independent witnesses like the policeman giving evidence in a running-down case about the marks on the road. I judge a witness to be unreliable if his evidence is, in any serious respect, inconsistent with these undisputed or indisputable facts, or of course if he contradicts himself on important points. I rely as little as possible on such deceptive matters as his demeanour. When I have done my best to separate the true from the false by these more or less objective tests, I say which story seems to me the more probable, the plaintiff's or the defendant's."

R. v. Pelletier, 1995 ABCA 128 at para. 18, citing MacKenna (1974) 9 Ir Jur (ns) 1, 10 quoted in Devlin, The Judge 63 (1979)

30. Most of the recent Canadian jurisprudence commenting on the desirability (or, in some cases, the necessity) for corroborating evidence is in the area of criminal law.

31. A commentary published in New Zealand (a British Common Law jurisdiction) sometime after 2016 (found at 1085_1707833461_39663_72_3.pdf) offers some useful guidance on the nature of corroborating evidence generally, and on its utility in the context of civil (non-criminal) proceedings:

    (a) "Corroboration" refers to any independent piece of evidence that supports or confirms another piece of evidence; courts define it as evidence that confirms, supports, or strengthens other evidence offered during a trial.

(b) It helps to establish legitimacy and trustworthiness; when a fact or occurrence is supported by multiple sources or types of evidence, one's confidence in its accuracy increases.

(c) Verification serves as a defence against incorrect conclusions; it ensures that decisions are founded on a more thorough and accurate comprehension of the available evidence. By requiring corroboration, courts can lessen the dependence on skewed or untrustworthy evidence that could result in unfair decisions.

(d) In a civil lawsuit, confirmation aids in confirming the veracity of the allegations presented by the parties. Evidence that is backed up by additional forms of proof supports the validity and accuracy of the assertions; it is especially important when the underlying matter involves serious accusations or claims that could significantly affect the people concerned.

(e) The burden of proof is on the party making the claim or allegation, and corroboration helps to achieve this duty. By requiring extra proof, the court raises the bar for admitting allegations, ensuring that the evidence offered is more convincing and dependable.

Compliance with Undertakings Given to the Society

32. Undertakings are a critical regulatory tool wielded by the Society. Strict compliance by the Member is not optional.

33. The breach of an Undertaking given to the Society by a member can not be described as a victimless offence. Undertakings are not just important; they are fundamental to our legal system. Failures of members to honour them must be firmly dealt with. The public has the right to expect that lawyers will keep their promises. The Society is charged with the responsibility of ensuring members of the legal profession do exactly that.

The Law Society of Manitoba v Wang, 2015 MBLS 12, paras. 64 to 69
The Law Society of Manitoba v Walker, 2020 MBLS 2, paras. 23 to 24

34. The breach of an Undertaking given to the Society is a serious matter which goes to the heart of the right to self-governance. If a regulatory body cannot effectively compel its members to comply with their duties and obligations as professionals, the public is not adequately protected and the very right to self-govern is put at risk.

The Law Society of Manitoba v Fawcett, 2023 MBLS 12, paras. 28 and 47(a)

Documentary Evidence Tendered

35. Sixty-eight exhibits were entered in the cause; there were over 1,000 pages of material submitted, although a number of specific documents appear multiple times.

36. In addition to the evidentiary exhibits, the panel also received and reviewed over 250 pages of material relating to the formal recusal motion (Paragraph 6 of these Reasons), together with over 550 pages of hearing transcripts produced for the purposes of that motion.

Personal Background of the Member

37. (a) Mr. Vyamucharo-Shawa was first called to the Bar in Malawai (a British Common Law jurisdiction) in 1982. He came to Canada around 1985, and began the process of gaining admission to the Society. He said that when he was called to the Bar in Manitoba in 1989, he was the first person of African origin to be so admitted.

(b) He was an associate in a mid-size firm in Winnipeg for the first seven months after his Call, and has been a sole practitioner since 1990.

(c) Mr. Vyamucharo-Shawa described some of the daily challenges faced by a Black man practising law on his own in Winnipeg. He said that other lawyers he deals with often question his competency, and he feels looked down upon by them as someone less educated than themselves and therefore "not up to the job".

(d) With respect to the Society generally, and with respect to the three recent Citations in particular, Mr. Vyamucharo-Shawa described feeling if not "betrayed" then at least disappointed with the manner in which he has been treated; he said he "expected better treatment".

Oral Evidence on the Complaints & Audit Processes of the Society

38. Mr. Christopher Donaldson was the complaints resolution counsel assigned by the Society to investigate the complaints giving rise to each of the Citations noted above. The salient points from his testimony include:

(a) Although Society requires that complaints be in writing, there is no standard or required form; complaints may be received in a variety of written formats. The Society does have a form on its website ("Complaint Help Form"), which is designed to assist potential complainants with the formulation of their submission, but there is no requirement that the form be used.

(b) Most investigations conducted by Mr. Donaldson follow a similar pattern. Upon receipt of a complaint, he sends a copy of it to the lawyer and requests a written response/explanation within 14 days. (Not

infrequently, the lawyer will request – and be granted – additional time to respond.) Once the response is received from the lawyer, a copy will be sent to the complainant for their information, accompanied by a standard cover letter. Often the response will prompt additional correspondence from the investigator – to the lawyer, to the complainant, or both – requesting additional information or documents.

[Note: With one exception, Mr. Donaldson followed the usual procedures in all three of the investigations in this case. In the Justice Rempel matter, the Member asked that his complete response to the Society not be disclosed to the judge. Instead, Mr. Donaldson prepared a redacted version and, with the consent of the Member, sent that version to Justice Rempel along with the usual cover letter.]

(c) When the investigation is complete, and the investigator is satisfied that charges against the member may be warranted, he prepares two separate memoranda to the Complaints Investigation Committee ("CIC") – one setting out the facts developed through the investigation; the other (being a privileged document) making recommendations with respect to the charges the CIC may wish to consider authorizing. The investigator has no role in the actual authorization of the charges (which is solely within the jurisdiction of the Chief Executive Officer of the Society and the CIC), and has no role at all in the drafting of any Citations which may follow.

39. Ms. Kathy Levacque is the Director, Audit for the Society; she was called to testify by counsel for the Member. The salient points from her testimony include:

(a) She has been employed by the Society since 2003, and has held the position of Director, Audit since 2013.

(b) The Audit Department examines the practices of members, with a specific focus on their compliance with the financial accountability rules of the Society. Auditors look for compliance with the core requirements of the rules; *how* a particular member chooses to record their financial transactions is up to them.

(c) Ms. Levacque testified that Society auditors are relatively independent; they may come to her for guidance on a particular matter, but it is entirely possible that an audit of a firm might be completed with no input or involvement on her part.

(d) She acknowledged that staff in the Complaints Resolution Department might consult with the Audit Department on occasion, but

said that this was not a common occurrence. They are only infrequently consulted by other departments of the Society.

(e) Ms. Levacque agreed an auditor would sometimes look at an Undertaking signed by a member, but only if it was relevant to the scope of the audit; she also agreed that the Undertaking would only bind the person who signed it.

(f) Ms. Levacque testified that the frequency of Society audits of firms in the "regular rotation" is every four years, and that firms or lawyers categorized as "at-risk" would be audited more frequently. In determining the frequency of audits of lawyers considered "at-risk", Ms. Levacque said the Society does not track individual lawyers by practice setting (such as "sole practitioner") or by race. She was not aware of complaints by Black lawyers in regard to the frequency with which their practices are audited by the Society.

Undertaking of the Member – December 17, 2021

40. The Member executed an "Undertaking to the Law Society of Manitoba" dated December 17, 2021. The panel heard evidence that, around that time, the CIC had convened a hearing to review certain (unspecified) concerns regarding the practice of Mr. Vyamucharo-Shawa; the Undertaking was its response to those concerns. The Undertaking remains in effect today.

41. The provisions relevant to this proceeding read:

"I, PAUL VYAMUCHARO-SHAWA, hereby UNDERTAKE to The Law Society of Manitoba (the "**Society**") that, effective immediately, I will:

1. make and maintain on the client file dated notes of all phone conversations and other contacts I have with the clients, other counsel or anyone else, which notes shall include a record of any advice given and/or instructions taken;

2. record and maintain on the client file detailed information about instructions received from the client and about each step taken on behalf of the client;"

Submissions on Behalf of the Society

42. The burden on the Society is to prove the allegations in each Citation on a balance of probabilities. A *prima facie* case meets this burden if it is not responded to by the member.

The Law Society of Manitoba v Doolan, 2016 MBCA 57, paras. 52 and 87
T.D. v The Director of Child and Family Services, 2015 MBCA 74, paras. 38 to 40

43. Pursuant to Rule 5-96(5), the panel must make two determinations:

(a) Have the facts alleged in the Citations been proved by the Society to the requisite standard?

(b) If so, does the conduct proven constitute professional misconduct?

44. The offences with which Mr. Vyamucharo-Shawa has been charged are strict liability offences, such that proof of an intention to contravene the *Act*, the *Rules*, or the *Code* is not required to support a conviction.

Riccioni v The Law Society of Alberta, 2017 ABCA 62, paras. 1, 3, and 5
The Law Society of Saskatchewan v. Phillips, 2015 SKLSS 2, paras. 13 and 15

45. The credibility of the Member and, in particular, of the explanations for his conduct which he has provided at various times since the complaints were lodged, is a serious issue in this case. Much of his evidence is inconsistent with the proven facts, and there are numerous internal inconsistencies in his evidence which he has not been able to explain away. His demeanour during his testimony, while not determinative in the assessment of his credibility, is nonetheless a factor which the panel ought to consider.

46. Each of the particulars in each of the Citations has been proven on a balance of probabilities, and the impugned conduct in each instance constitutes professional misconduct.

47. The panel was urged to convict Mr. Vyamucharo-Shawa of all of the charges.

Submissions on Behalf of the Member

48. None of the particulars in any of the Citations has been proven on a balance of probabilities, and none of the impugned conduct – even if found to have been proven – constitutes professional misconduct.

49. With respect to Citation 1, Mr. Vyamucharo-Shawa has complied with his *own* obligations pursuant to the only Undertaking he has provided to the Society, and ought not to be held responsible for the failures (if any) of his Supervisor to comply with her obligations.

Mr. Vyamucharo-Shawa has provided a reasonable explanation for his alleged "failure" to respond to certain communications from another law office over a period of about two weeks. He maintains that he did not breach any of the trust conditions which he had accepted and, indeed, the Society has not charged him with any such breach.

Mr. Vyamucharo-Shawa did not contravene any law, *Rule*, or provision of the *Code* when he demanded an undertaking from counsel opposite on a real estate transaction to personally pay the purchase proceeds to his office in the event the expected wired funds did not materialize. Lawyers give all manner of

personal undertakings in the course of their practices, and demanding one from another lawyer does not constitute professional misconduct.

50. With respect to Citation 2, the impugned recording of a CMC did not contravene any official, signed Practice Direction or Notice to the Profession, and did not contravene any provision of the *Rules* or the *Code*.

The letter to Justice Rempel was sent after he had lodged a formal complaint with the Society. It was sent in the context of a civil proceeding in which they were both involved. His client was becoming increasingly concerned with the fairness of the proceedings, and both the tenor and the contents were appropriate and justified by the circumstances.

The context of the letter to the Society, responding to the Rempel complaint, was similar to that of the earlier letter. It was expressly figurative and was not intended to be taken literally. Again, Mr. Vyamucharo-Shawa believed both the tenor and the contents were appropriate and justified by the circumstances.

51. With respect to Citation 3, the allegations made by Mr. C were untrue and defamatory. It was he – not the Member – who took the egregious allegations out into the community, thereby meeting the "publication" requirement for the tort of defamation. The Society did not see fit to charge the Member with any of the wrongdoing alleged by Mr. C, yet it is alleging professional misconduct on his part when he is simply responding to the unwarranted attacks on his integrity and his reputation in the community.

52. The panel was urged to acquit Mr. Vyamucharo-Shawa of all of the charges.

Evidence, Analysis, & Dispositions (by Citation)

53. It is well-settled that in Society discipline matters, the foundational documents are the Citations in which the allegations against the member have been particularized. It is also well-settled that those allegations must be proved to the satisfaction of the panel on the civil standard of balance of probabilities. In determining whether the standard has been met with respect to any particular allegation, the panel is entitled to consider any direct evidence on the point and to draw reasonable inferences from other evidence tending to prove or disprove the allegation.

54. The evidence led by the member in response to the allegations in the Citations is to be assessed on the same "balance of probabilities" standard; the panel is again entitled to consider the direct testimony of witnesses and to draw reasonable inferences based on the totality of the other evidence.

55. The conduct phase of a professional disciplinary hearing must address two basic issues:

(1) Did the regulator prove the alleged conduct on a balance of probabilities?

(2) If so, did the conduct so proven constitute "professional misconduct" within the context of the applicable common law, the statutory framework of the regulator, and any rules or codes of conduct established by the regulator pursuant to that framework?

If the answer to either of these questions is "No", the member must be acquitted.

56. Where the answer to Question (1) turns on an assessment of the credibility of one or more witnesses, the classic formulation of the test is set out in the oft-cited *Faryna v Chorney* (Paragraph 28 above).

57. "A practical and informed person" in the context of Citation 1 would be someone familiar with real estate practice in Manitoba. In the context of Citation 2, it would be someone familiar with civil litigation practice in Manitoba, and with the expected norms of civil discourse within the local legal community. In the context of Citation 3, it would be someone familiar with the processes of professional discipline and, in particular, the desirability of maintaining the confidentiality of the process until such time as public disclosure is either expedient or required by law or practice.

58. With these principles in mind, the analyses which follow will closely follow the format and content of each of the Citations identified above.

Citation 1 – The Brown Complaint

59. Citation 1 arose in the context of a real estate transaction in which Ms. Gemma Brown represented the buyer and the Member represented the seller.

Evidence (Citation 1)

60. Mr. Donaldson was asked on cross-examination whether he received a "pocket" (file folder) with handwritten notes on it from the Member in response to his request for the original client file on the Ms. Brown matter (Exhibit 12); he responded that if he had received a file folder with a sticker or notes on it, he would have scanned it into his investigation file along with the rest of the client file. [Note: There is no copy of an annotated file folder cover in Exhibit 12. Evidence adduced later in the hearing showed that the original client file had been returned to Mr. Vyamucharo-Shawa on October 7, 2021. Although on cross-examination, he repeatedly asserted that the copy of the file in evidence before the panel was "incomplete", and was invited to bring the original file to the hearing, he did not do so.] Mr. Donaldson also testified that when questioned about the lack of notes on the client file, the Member did not say anything about having made notes on the file folder cover.

61. As noted above, Ms. Brown was the lawyer for the buyer in the real estate transaction which gave rise to Citation 1. [Note: Ms. Erin Schultz (*née* Loewen) was her legal assistant at all material times.] The salient points from her testimony (which involved references to numerous individual documents from Exhibit 4) include:

(a) Ms. Brown was called to the Manitoba Bar in 2009. Prior to attending law school, she had worked as a legal assistant for about eight years. In a typical year, she will handle 350-400 real estate transactions; in a "slow" year she will close about 250 transactions. Ms. Brown acts for residential and commercial buyers and sellers, and for a variety of private and institutional lenders.

(b) Ms. Brown described the three types of closing most commonly used in Manitoba, and the approximate frequency with which she uses each of them:

(i) Standard, based on "the usual trust conditions", although the exact wording of the conditions might vary from lawyer to lawyer (20%);

(ii) Protocol, based on standardized trust conditions mandated by the Society (40%); and,

(iii) New Conveyancing Protocol ("NCP"), which requires that title insurance with gap coverage be put in place covering the buyer and the lender or, if no financing is involved, just the buyer (40%).

She chose a Standard closing for this transaction because there was no financing and because the buyer (in part due to the low value of the property being acquired) was not getting title insurance for himself.

(c) Ms. Brown described the usual process of preparing a "registerable Transfer of Land":

(i) the lawyer for the seller prepares the "Transferor" portion of the electronic form (seller name/address, legal description of the property being sold, active encumbrances on the title, the consideration paid, and the Homestead declaration), has the seller sign a paper copy, then "locks" the document and forwards it electronically to the lawyer for the buyer [Note: The "locking" is an important step because this is what creates the signature page for the transferee within the document.]; and,

(ii) the lawyer for the buyer then completes the "Transferee" portions (name/address of the buyer, the Fair Market Value declaration, and the Land Transfer Tax exemption, if any), has the buyer sign a paper copy of the signature page, then "locks" the document. [Note: The document is not "registerable" until all of these procedures have been completed.]

(d) The transaction out of which her complaint to the Society arose involved the sale and purchase of a vacant parcel of land valued at a relatively modest $19,000. There was no commercial lender involved on the part of the buyer, and the father of the buyer (who lived in the USA) was providing the funds to close. No title insurance was considered (or ever obtained) by or on behalf of the buyer.

(e) The original Offer to Purchase dated April 4, 2021, stipulated a closing date of April 15, 2021, but as her office policy requires a minimum of two weeks before closing, this date was changed to April 20, 2021.

(f) As the new closing date approached, several things happened. Although the father of her client had arranged for a wire transfer of funds from his US bank to the firm trust account in Steinbach, and although Ms. Brown had confirmed that the correct banking information had been used to initiate the transfer, there was an ongoing and unexplained delay in the receipt of the funds by her office. Further complicating the matter, Mr. Vyamucharo-Shawa had not provided a Statement of Adjustments, a registerable Transfer of Land, or a letter setting out his proposed trust conditions. Nothing of substance occurred on April 20, 2021, and the transaction did not close as scheduled. [Note: All of the subsequent documentation and communications between the lawyers refer to the closing date as "April 21, 2021", but the reason for the change is not apparent from those materials.]

(g) On April 21, 2021, at 10:25 AM, Ms. Brown sent Mr. Vyamucharo-Shawa an email advising that her client had executed documents (but not the eTransfer, which had not yet been received) and that she was still awaiting receipt of the wired funds. She forwarded her proposed trust letter, and again asked for the Statement of Adjustments which Ms. Shultz had requested (via email) the previous day. [Note: Notwithstanding the irksome delay in receiving the wire transfer, Ms. Brown was not concerned that the transaction would not (eventually) close. It was a low-value transaction of a vacant of parcel land.] The record does not disclose any response from Mr. Vyamucharo-Shawa that day to the email from Ms. Schultz.

(h) On April 22, 2021, at 11:24 AM, Mr. Vyamucharo-Shawa sent Ms. Schultz an email inquiring whether her office had received the wire transfer of funds. She replied 18 minutes later that while they were still waiting, the funds were expected that day. She asked for confirmation that their proposed trust conditions were acceptable to him, and again requested an eTransfer and a Statement of Adjustments. Three minutes later, Mr. Vyamucharo-Shawa replied: "Waiting for your tender [of funds]." With his email sent at 1:34 PM, Mr. Vyamucharo-Shawa forwarded a number of documents (including the eTransfer and the Statement of Adjustments), and concluded with the statement: "If funds are not received in our office by close of business tomorrow we shall advise [the seller] of his options." Twelve minutes later, Ms. Schultz asked him to send the "etransfer locked form" so that she could complete the Transferee portion.

(i) In an email sent at 8:53 AM on April 23, 2021, (now three days after the scheduled closing), Ms. Brown wrote: "I have not received your trust letter or the transfer to be able to complete the transfer for the purchaser. It is to be sent in trust that no use of be made (ie registration) until funds have been received by you. I am unsure of why the response to my assistant's request ... was made. This is how I close ALL of my many hundreds of real estate transactions every year, and [on] not one I have been faced with this response." She went on to advise that they were "again following up on the wire transfer of funds", and that the delay "appears to be a banking issue as the transfer was sent on the 19th [of April, 2021] I understand". At 11:34 AM, Mr. Vyamucharo-Shawa replied: "My office practice is not to send the eTransfer until tender. You[r] trust conditions will be accepted."

(j) A veritable flurry of emails (all sent on April 23, 2021) then followed:

Ms. Brown (2:09 PM): "You have not provided a trust letter to which I can review and determine whether I can comply with your conditions. You have not tendered to my office. I do not know the basis for the claim you are asserting and whether your client is aware of this basis. We have requested a reasonable accommodation to the closing date, given the wiring of funds issue. This was brought to your immediate attention. I note that the documents you scanned to me yesterday were dated April 22nd, which as (*sic* – "is") also a day after the original date for the delayed closing (at least one document was not dated). Your failure to follow standard closing protocols between lawyers in this respect is unfortunate, I am restating my position once again in that respect. We have again requested a delay in closing while our office and the purchaser investigates the wire transfer issue with the

financial institution. We note no party is prejudiced as this is vacant land, *and a regular closing to which funds could not be released until title has issued*. (Emphasis added.)

Ms. Brown (2:38 PM): "I am advised ... our clients have spoken, and the parties have mutually agreed to an extension until Wednesday, April 28th."

Mr. Vyamucharo-Shawa (2:41 PM): "You have advised that you do not have funds to close this transaction. Give me your personal undertaking that you will pay in the event the alleged wire transfer does not materialize. Of course there is prejudice to our client who is relying on this transaction to be consummated in order for him to proceed with his other undertakings.

You have not requested an extension of time for closing. What Am I to make of this."

Ms. Brown (2:43 PM): "I cannot do as mentioned. I did in fact request an extension, and through the agents. Our clients have agreed to same.

I still do not have a trust letter from you."

Mr. Vyamucharo-Shawa (2:52 PM): "I am not aware of the alleged extension. As a matter of fact I have just spoken to my client and he advises that he has not agreed to any extension. May I have your undertaking as requested.

You now have my closing letter." [Note: This email does not appear to have any attachments.]

Ms. Brown (2:55 PM): "My client spoke to your clients (*sic*) daughter about 30 minutes ago. She agreed to relay that information, and has been assisting her father. I am requesting again you confirm that.

You are asking for an undertaking I cannot give, you could not give it either.

I do not have your closing trust letter by email."

Mr. Vyamucharo-Shawa (2:57 PM): "Attached is our closing letter. The other closing documents have already been provided to your office."

Mr. Vyamucharo-Shawa (3:04 PM): "Attached is eTransfer [eTransfer #1], U are ... not to use the enclosed eTransfer until you have tendered the funds in accordance with our Statement of Adjustments provided to your office or until we have your ... personal written undertaking to pay to our office the said funds." [Note: It is not clear why Mr. Vyamucharo-Shawa now chose to deviate from the "office practice" cited above.]

Mr. Vyamucharo-Shawa (3:06 PM): "Not true." [Note: It is not clear from the documents what this refers to, but Ms. Brown believed it was his response to her email at 2:38 PM, advising that the clients had mutually agreed to an extension to May 28, 2021.]

Mr. Vyamucharo-Shawa (3:14 PM): "You should be receiving the original documents via Canada Post Express. We await to hear from you."

Mr. Vyamucharo-Shawa (3:30 PM): "I have spoken to both the seller and the Real Estate Agent, Mr. Zeeshan Ali. They both are unaware of the ... alleged extension."

Ms. Brown (3:31 PM): "Your clients (*sic*) daughter is aware, and my client asked the Agent specifically. I have an email also from our office to the agent."

Ms. Brown (3:32 PM, in response to the email sent at 3:04 PM): "Received."

Ms. Brown (3:32 PM): "We do not have any originals via Canada Post. Please provide tracking number."

Ms. Brown (3:37 PM): After noting several errors in the documents provided by Mr. Vyamucharo-Shawa, she writes: "On the point of the trust letter, you have provided an NCP trust letter. We will not be closing pursuant to NCP trust conditions, as evidenced by our trust letter provided to you April 21. Please confirm the regular closing conditions you intend to close upon." [Note: The "Standard NCP trust conditions" numbered 5 and 7 in the closing letter provided by Mr. Vyamucharo-Shawa specifically contemplate the buyer obtaining gap title insurance. Ms. Brown testified that she would have accepted the conditions numbered 1 and 4 through 7, since they were similar to the usual Standard conditions, even though some provisions were inapplicable to this specific transaction.]

Ms. Brown continues: "I confirm I have received your [eTransfer #1] by email, which will not be used until funds have been tendered to

your office. Again, my client apologizes for the lenders (*sic*) delay in this matter, they are tracing as we speak. The funds are coming via a wire transfer, which I indicated to you on our call on April 16, and again on April 21st when we sent [our] trust letter via email. I can advise that our firm has acted for the family and the seller [Note: Ms. Brown testified that this was a mistake on her part; she meant to type "buyer".] for many years, and this has never been a concern. My client has spoken with your clients (*sic*) daughter in the matter, and has explained the concern, and requested the extension to April 28th, which your clients (*sic*) daughter agreed to, and explained she would explain that to her father. Further, we have emails with Mr. Ali around 1:00 to 1:45 this afternoon again explaining the situation and the request for an extension. I understand that your office has advised the agent and the transaction or our office was being 'shady'. This is far from the truth of this matter, and all of our communications with [our] client and your office have been thoroughly documented.

I am remise [*sic* – "remiss", perhaps] to say it is unfortunate that this transaction has taken this turn.

I await your response."

Ms. Schultz (4:13 PM): Advising the Member that the name of his client had been spelled incorrectly on eTransfer #1, and requesting a correction letter from him.

Mr. Vyamucharo-Shawa (4:27 PM, in response to the email sent by Ms. Brown at 3:37 PM): After dealing with the documentation errors noted, and in direct response to her remarks regarding his NCP closing letter, he wrote: "You do not have a monopoly of how to close a transaction." He continued: "I can advise that my client has called me to advise that he will agree to an extension to April 28, 2021, conditioned that the Date of Adjustment shall remain April 21, 2021, and further that if you fail to tender funds by close of business on April 28, 2021, your client will have uncontestably breached the Contract between the parties. Kindly confirm acceptance of this."

Mr. Vyamucharo-Shawa (4:36 PM, in response to the email sent by Ms. Schultz at 4:13 PM): "My sincere apologies. Will do."

(k) The wire transfer funds were received on April 26, 2021. A trust letter (containing the same conditions as the draft sent by email on April 21, 2021), together with a trust cheque for the full amount due on closing, was sent to Mr. Vyamucharo-Shawa by Purolator later that same day. It was delivered to his office at about 11:00 AM the following day, at which point the transaction could finally be considered "closed"

notwithstanding that eTransfer #1 was not yet "registerable" (pursuant to Trust Condition 1).

(l) The trust letter contained two conditions which are of particular relevance to these proceedings. The material portions of the letter read:

> "The enclosed funds are sent to you in trust and on the following conditions: ...
>
> 1. That the Transfer of Land you have provided will be satisfactory upon registration in the Winnipeg Land Titles Office to cause a new Certificate of Title to issue in the names of our clients free and clear of all registered mortgages, liens, charges, and encumbrances except those placed by or through the transferee.
>
> ...
>
> 6. That if you are unable or unwilling to accept any or all of the aforesaid trust conditions, you will telephone our office to discuss alternatives. Failing the settlement of alternative trust conditions and upon our so demanding, the enclosed monies are to be returned immediately to our office."

(m) Although there were numerous communications involving Ms. Brown, Ms. Schultz, and Mr. Vyamucharo-Shawa over the ensuing weeks, as of May 25, 2021 (four weeks after "closing"), eTransfer #1 was still not yet "registerable". There were several reasons for the delay:

(i) the requested correction letter was not provided by Mr. Vyamucharo-Shawa until May 19, 2021;

(ii) the original signed Transferor signature page was not provided by him until May 19, 2021;

(iii) a deficiency in the Homestead/Farm Lands evidence had been discovered; and,

(iv) when Ms. Schultz attempted to upload eTransfer #1 on May 25, 2021, it was rejected because by then the land titles system was no longer accepting eTransfers on the "old" form used by Mr. Vyamucharo-Shawa. Ms. Schultz immediately emailed him advising him of the rejection and asking that he "have the correct form completed and re-signed by your client and send the original to our office for registration".

[Note: Ms. Brown *thought* eTransfer #1 was "registerable" when it was submitted for registration, but testified that "you

don't know whether a Transfer is 'registerable' until it has actually been 'accepted' by the land titles office". In any event, Ms. Brown was not overly concerned as she believed the buyer was adequately "protected" by the trust conditions by which Mr. Vyamucharo-Shawa was bound; she testified she was unaware at that time that Mr. Vyamucharo-Shawa had disbursed the bulk of the sale proceeds - $17,000 to the client and $680 to the real estate company – on May 5, 2021.]

(n) Mr. Vyamucharo-Shawa emailed a re-executed eTransfer in the correct form [eTransfer #2] along with a correction letter (a lot number had been inadvertently omitted from the land description) on May 27, 2021, and advised that the originals would be put in the mail the following day.

(o) eTransfer #2 was eventually received by Ms. Brown on June 14, 2021, and was uploaded by Ms. Schultz the same day. Ms. Brown received a system-generated email from Teranet Manitoba at 10:36 PM on June 21, 2021 confirming eTransfer #2 had achieved "Accepted" status; title issued to her client the following day.

(p) In the meantime, Ms. Brown and Ms. Schultz had asked Mr. Vyamucharo-Shawa at least four times (three emails and once during a telephone call Ms. Schultz had made to him on June 11, 2021) whether he "continue[d] to hold the sale proceeds". While Mr. Vyamucharo-Shawa responded to the emails, he did not address this specific question in any of his responses. A contemporaneous note made by Ms. Schultz during the telephone conversation records him as saying "Ummm I don't know, I'll have to check on that. But I don't like changing trust conditions, your client could've gotten title insurance." (Exhibit 34)

(q) On the issue of Mr. Vyamucharo-Shawa practising under supervision, Ms. Brown testified that she first became aware of this when he emailed her to that effect on November 8, 2021.

(r) On cross-examination, Ms. Brown reiterated that the actual issuance of title in the name of the buyer is the only way to guarantee compliance with her Trust Condition 1. Further, it is an "expectation" among real estate practitioners and a "standard practice" that sale proceeds (received as part of a "Standard" closing) will not be released until title issues.

(s) When asked whether she thought the "tone" of the email or telephone communications from Mr. Vyamucharo-Shawa was "disrespectful" or "out of the ordinary", Ms. Brown replied that the demand for a

personal undertaking to pay the closing funds if the anticipated wire transfer did not materialize felt like an unwarranted personal "attack" which was unnecessarily interfering with the transaction.

(t) With respect to her Trust Condition 1, Ms. Brown conceded it contains no express reference to holding funds until title issued, but said again that the lawyer for the seller cannot guarantee that title *will* issue until it actually *does*. She went on to note that when Mr. Vyamucharo-Shawa released the bulk of the funds on May 5, 2021, she definitely had not received a "registerable" eTransfer from him, and that the release of funds from his trust account was something that he himself controlled.

(u) Asked about her understanding of the distinction between an "undertaking" and a "trust condition" (in the context of a real estate transaction), Ms. Brown indicated that she believed the latter "facilitates completion of the contract between the parties" while the former is something the lawyer is "personally capable of fulfilling".

62. The oral evidence of Ms. Schultz did not add much of substantive importance to the testimony and documents introduced into evidence through Ms. Brown, although she did corroborate much of that evidence. The salient points from her testimony include:

(a) Her file notes designated as "TCW" ("Telephone Call With") were made – either typewritten or handwritten – contemporaneously with the conversation; she conceded on cross-examination that her notes were not necessarily "word for word" and that it was possible Mr. Vyamucharo-Shawa had said something else in their conversations that was not recorded in her notes. For example, she stated her use of "…" simply meant that he had repeated something he had already said earlier. Ms. Schultz specifically rejected the suggestion that, when they spoke on June 11, 2021, he had stated that he had already released the funds.

(b) The need for eTransfer #2 arose, in part, because the new form came into use around May 12, 2021 – after the actual date of closing but before May 25, 2021, when eTransfer #1 was rejected by the Teranet Manitoba system.

(c) Ms. Schultz did not receive any response to her emails to Mr. Vyamucharo-Shawa inquiring whether he continued to hold the sale proceeds (May 27, May 28, and June 4, 2021), nor did he follow-up with a response to her telephone inquiry on June 11, 2021.

(d) Ms. Schultz conceded on cross-examination that Mr. Vyamucharo-Shawa usually replied promptly to her email inquiries, but was "not worried" when – between May 27, 2021 and June 11, 2021 – he did not respond to her specific inquiries about the continued holding of the funds; she assumed he "just didn't want to respond".

(e) Her telephone conversation with his assistant, Mr. Huletey, on June 10, 2021, was very short. He said only that Mr. Vyamucharo-Shawa was "out of the office"; there was no mention of a COVID-related illness.

(f) The accounting functions at the firm are performed by an in-house department. On this transaction, the funds were wired by the father of the buyer on Wednesday, April 19, 2021, but receipt of the funds in the firm trust account was not confirmed by the Accounting Department until the morning of Wednesday, April 26, 2021. Typically, in her experience, wired funds are received within one to three business days after transmission; where there is a delay, she would have made inquiries after three to four days. She agreed the delay in this case was "concerning".

(g) Ms. Schultz agreed that the lawyer for the Transferee can complete and sign some sections of the eTransfer, but noted that Homestead evidence cannot be remedied by way of a correction letter.

63. Mr. Zeeshan Ali was the real estate agent involved in the transaction which gave rise to Citation 1. The salient points from the testimony of Mr. Ali include:

(a) At the time of this transaction, Mr. Ali had been a real estate agent for about five years. He acted for both the buyer and the seller in the matter.

(b) The buyer had his own lawyer. Mr. Ali – at the behest of the seller – provided him with the names of two other lawyers; one was Mr. Vyamucharo-Shawa, with whom Mr. Ali had had many prior dealings.

(c) Mr. Ali had arranged the original extension to the closing date (from April 15, 2021 to April 21, 2021), but was not involved in the arrangements to further extend the closing date to April 28, 2021; that was handled entirely by the two law firms (although he did forward one email that he had received from Ms. Schultz to Mr. Vyamucharo-Shawa for a response, and he did have one subsequent telephone conversation with him about the second extension).

(d) Mr. Ali had several text message exchanges with Mr. Vyamucharo-Shawa regarding the transaction:

(i) On May 5, 2021, at 1:10 PM, he texted: "Call me please, Railway avenue [the subject property]; waiting for the cheque".

Mr. Vyamucharo-Shawa responded at 9:09 PM with: "Railway ... taken care of." [Note: Mr. Ali interpreted this to mean that the deal had closed and was completed.]

(ii) On May 20, 2021, at 4:49 PM, Mr. Ali texted: "Sir please pay out Railway rd" then "Soon I m gonna be broke [two "crying" emojis]". Mr. Vyamucharo-Shawa responded immediately with: "Cheque mailed today".

(e) On cross-examination, Mr. Ali conceded he told the buyer that "it's gonna be tough [to get a second extension] but I can still try". He said this because the lawyers were now involved, and because the reason the second extension was needed was because the cash required to close still had not come in.

(f) Mr. Ali specifically rejected the suggestion that he had attended in person at the office of Mr. Vyamucharo-Shawa to pick up the commission cheque. He did not remember ever having picked up a commission cheque at the office of a lawyer, and emphatically denied that he had "failed" to pick up the cheque in this matter on May 5, 2021 (being the date on both the commission cheque and the cover letter, found at Exhibit 4, Tabs 46 and 47).

(g) Mr. Ali acknowledged that the daughter of the seller did not have the authority to agree to the second extension, and the authority for such an agreement would rest with the seller, Mr. Vyamucharo-Shawa, or both.

64. The salient points from the testimony of Mr. Vyamucharo-Shawa with respect to Citation 1 include:

(a) His Undertaking dated December 21, 2017 (Exhibit 4, Tab 2) is the only one he has ever given to the Society. He understands that an Undertaking is a "very serious commitment" and a "very strong promise". Mr. Vyamucharo-Shawa believes a member "cannot be mistaken as to what you are undertaking"; he laments that the Undertaking he was given to sign was "so general", such that "a member could have a different understanding". [Note: On cross-examination, he observed that the wording was, in fact, "very clear".]

(b) With respect to Charge 1(b) of Citation 1, his position is that there is nothing in the *Code* (which he reviewed before sending the email asking for the personal undertaking from Ms. Brown) which prohibits one member from seeking such an undertaking from another member.

Mr. Vyamucharo-Shawa says he did it to emphasize that this was "not a normal transaction, small as it was". He believed then, and still believes, that his request for a personal undertaking was "entirely appropriate".

He did not consider the fact that Ms. Brown had accepted his trust conditions provided sufficient comfort. He wanted to protect his client from potential harm, noting that "trust conditions can be breached".

(c) Mr. Vyamucharo-Shawa testified that there were a number of things about the transaction in question which were all "very concerning to him":

(i) the real estate agent was acting for both the buyer and the seller;

(ii) he had never seen a civic address of "0" before, causing him to wonder whether the property actually existed;

(iii) the benefit of the Offer to Purchase had been assigned to a numbered company, which he found "suspicious";

(iv) the funds to close were not received by him on or before the closing date;

(v) extensions were being asked for because the funds to close were not available when they should have been;

(vi) Ms. Brown was asking for an eTransfer before she had tendered funds, a request which he refused (initially, at least); and,

(vi) although he had dealt with Ms. Brown as a legal assistant, this was the first time he had a file with her as a lawyer (and he was not even certain that she *was* a lawyer).

(d) With respect to Charge 1(c) of Citation 1, Mr. Vyamucharo-Shawa testified that his understanding of Trust Condition 1 in the Ms. Brown closing letter was that his obligation was "to do all in my power to ensure that title vested in the name of the transferee", noting that it

does not require that he hold the sale proceeds until title has issued. He viewed the repeated requests to confirm that he was still holding the funds as an improper attempt to impose a new trust condition after the conditions had been "settled" and the transaction "closed".

(e) Mr. Vyamucharo-Shawa says he did not respond to the repeated requests for confirmation that he was still holding the funds because he was "still questioning whether [Ms. Brown] really knew what she was asking". He insisted that he is not required to confirm a condition which he had not agreed to, and that it was "unreasonable for her to ask". He believed Ms. Brown was "trying to sneak in a different trust condition" and he was "not going to play that game".

(f) Mr. Vyamucharo-Shawa provided proof that he had received a COVID-19 vaccination on May 26, 2021. He said he had a "very, very bad reaction" to it. He was able to work the following day, but was then away from his office from May 28 to June 11, 2021. He agrees he told Ms. Schultz he would have to check about the funds still being in his trust account, but denies the description of the telephone call set out in Citation 1; specifically, he disagrees that he "denied knowing" whether the funds were still being held. Mr. Vyamucharo-Shawa says he repeated his earlier position that the trust conditions had previously been "settled" and could not now be augmented. He testified that he was not in his office when Ms. Schultz called, and thought he should review his file again before responding to her inquiry regarding the funds (although he is not sure he ever did).

(g) Mr. Vyamucharo-Shawa says he was out of his office for the entire time (from May 28 to June 11, 2021). He says that while the "COVID-19 Proof of Vaccination" document (Exhibit 46) was provided to Mr. Donaldson, it was not in the disclosures he received from the Society; Mr. Vyamucharo-Shawa also says he advised Mr. Donaldson of the reason for his absence from his office after May 27, 2021.

(h) With respect to the delay in sending the original transfer documents to Ms. Brown, Mr. Vyamucharo-Shawa says he had instructed Mr. Huletey to make the necessary arrangements, but he had not done so. [Note: He has not been charged with failing to properly supervise Mr. Huletey, pursuant to Rule 6.1-1 of the *Code*.] Nevertheless, Mr. Vyamucharo-Shawa considered this a satisfactory explanation for the delay. He agreed several minor mistakes had been made in the preparation of the transfer documents and conceded that he was ultimately responsible; he described the whole matter as "very unfortunate".

(i) Mr. Vyamucharo-Shawa believes he bears no responsibility for any delay between the date when Ms. Schultz uploaded the completed eTransfer #2 (June 14, 2021) and the date when title issued (June 22, 2021), a total of five business days. He found the five-day delay "unusual", and insisted "*something* must have gone wrong". [Note: There is no evidence of anything untoward occurring within Teranet Manitoba in connection with the registration during this time period.]

Analysis (Citation 1)

65. The allegations and the assessments of the panel are:

Charge 1(a): The Member failed to advise Ms. Brown that he was practising under Supervision and failed to provide Ms. Brown with contact information for his Supervisor when he was required to do so pursuant to his Undertaking signed on December 17, 2021 (Exhibit 4, Tab 2).

The panel notes that his Undertaking did not contain any expression provision requiring that Mr. Vyamucharo-Shawa provide Ms. Brown with the information he is said to have failed to provide. The Undertaking signed by his Supervisor on April 9, 2020 (Exhibit 4, Tab 3) contains a provision at Clause 5(b) which reads: "I, [name redacted], undertake to The Law Society of Manitoba (the "**Society**") that, commencing on such date as the Law Society of Manitoba may advise, I will supervise **PAUL SYDNEY VYAMUCHARO-SHAWA**, in the practice of law and, in particular, I will: ... 5. On every file: ... (b) ensure that the party opposite or such party's legal counsel, where appropriate, is advised in writing at the time of first contact with Mr. Vyamucharo-Shawa, that he is practising under my supervision, along with my contact information".

Although this is the undertaking of the Supervisor, not the Member, it is based – impliedly, if not expressly – on the premise or understanding that the Member himself was under some sort of obligation to disclose his supervisory status to the parties opposite, and their lawyers (where appropriate). The Undertaking of the Member post-dates the Undertaking of the Supervisor by more than twenty months, such that the latter *had* to have been in the contemplation of the parties when it was prepared and signed. [Note: Mr. Donaldson testified that there had been two other Supervisors prior to the person who signed the Undertaking at Exhibit 4, Tab 3.]

It would certainly have been preferable for the Undertaking of the Member to have expressly acknowledged and adopted the requirements of Clause 5(b), but there cannot be any serious doubt that he was aware of the contents of the Undertaking of the Supervisor when he later signed his own.

Nevertheless, if strict compliance with an Undertaking is the expectation, then the completeness of its terms *on its face* and the unequivocal clarity of its wording are the minimum requirements for any enforcement action.

The panel finds that this allegation has not been proved to the requisite standard. Whether the Society considers the Supervisor to have been in breach of her own Undertaking at any time is not for this panel to determine.

Charge 1(b): In an email exchange on April 23, 2021, the Member sought from Ms. Brown, as a condition of delivering a transfer of land so that she could complete the transferee portion, her personal undertaking to pay the balance required to close the transaction when Ms. Brown had told the Member she would accept a trust condition not to submit the transfer for registration until the balance to close had been provided to the Member.

Based on the email exchange of April 23, 2021 (Exhibit 4, Tab 20), the oral testimony of Ms. Brown, the contents of the letter from Mr. Vyamucharo-Shawa to the Society dated July 21, 2021 (Exhibit 23, Page 6), and his admissions during his own oral testimony, the panel finds that the facts supporting this allegation have been satisfactorily proved.

The demand for the personal undertaking was, at a minimum, discourteous and unreasonable. Based, as it apparently was, on the presumption that Ms. Brown would not honour the undertaking she *had* given (that no attempt would be made to register the eTransfer until the funds to close had been provided to Mr. Vyamucharo-Shawa), it bordered on disrespectful. The system of real estate transfers in Manitoba would collapse if that attitude were to become prevalent among the real estate bar.

Rule 7.2-11, Commentary [3] of the *Code* cautions against imposing unreasonable *trust conditions*. While these provisions do not explicitly prohibit a demand for an unreasonable *undertaking*, the two concepts are so closely related in the context of a real estate transaction that neither demand ought to be viewed as acceptable. Any lawyer, including Mr. Vyamucharo-Shawa, is likely to respond to such a demand with the same apparent indignation as Ms. Brown and, to that extent, the demand was unnecessarily provocative.

The question remains, however, whether the conduct – considered within the context of a transaction which was turning out to be anything but straightforward – was sufficiently egregious to support the serious finding of professional misconduct. In the view of the panel, it was not.

At the end of the day, the transaction was completed – the buyer had good title to the property, the seller had his sale proceeds, and no member of the public was harmed.

Charge 1(c): The Member failed to respond directly and in a timely fashion, or at all, to inquiries from Ms. Brown and her assistant (Ms. Schultz), on four

specific dates, as to whether the Member continued to hold the purchase funds in trust.

It is important to note that Mr. Vyamucharo-Shawa has not been charged with failing to comply with a trust condition – specifically, a trust condition requiring that he provide a registerable transfer of land – within a reasonable time.

The evidence is clear, however, that Mr. Vyamucharo-Shawa did not respond to the emails of May 27, 2021, May 28, 2021, or June 4, 2021, and that he was vague, and less than forthright, when the same question was put to him by Ms. Schultz during their telephone conversation on June 11, 2021.

The panel heard testimony from Mr. Vyamucharo-Shawa that he had a severe reaction to a COVID vaccination he received on May 26, 2021, necessitating a two-week absence from his office. There was no medical evidence provided to corroborate the severity and duration of his inability to work. The panel does note Mr. Vyamucharo-Shawa responded fairly promptly to emails from Ms. Brown and Ms. Schultz which preceded May 27, 2021 and which came after June 11, 2021, again providing some corroboration for the time frame of his illness. [Note: On the other hand, evidence was led on cross-examination (Exhibit 61) establishing, beyond question, that he met with a client on May 30, 2021, to deal with the execution of a fairly complex affidavit with seven, several lengthy, exhibits, all of which had to be individually notarized by him.]

Timeliness and an explanation based on illness aside, the panel finds that the facts in support of this allegation have been proved to the appropriate standard. The specific allegation is that Mr. Vyamucharo-Shawa failed to respond to inquiries about whether he continued to hold the purchase funds in trust. Having disbursed the bulk of the funds on May 5, 2021 (more than three weeks before the first inquiry), Mr. Vyamucharo-Shawa was in no position to give the confirmation sought by Ms. Brown and Ms. Schultz, and so simply did not do so.

As with respect to Charge 1(b), the question remains, however, whether his conduct was sufficiently egregious to support the serious finding of professional misconduct. Again, the panel does not believe it was.

Mr. Vyamucharo-Shawa argued that the trust conditions which he accepted made no mention of holding funds in trust until title had issued. The panel acknowledges the merit of this position (based on the actual wording of the trust condition), but questions why – if he truly believed he had done nothing wrong by disbursing the funds when he did – he did not make that assertion in a prompt, forthright response to those very specific inquiries.

There is no doubt that by releasing the funds when he did, Mr. Vyamucharo-Shawa was assuming a significant personal risk; had circumstances arisen

where Ms. Brown felt compelled to demand the return of the tendered funds, he would have been unable to comply. In this regard, his letter to his client which accompanied his cheque (Exhibit 4, Tab 44) reads, in part: "This report is being made prior to completion of the matter to assist in your financial situation. Our standard procedure is to only report after title has issued to the Purchase[r] and not before."

Mr. Vyamucharo-Shawa had another opportunity to "come clean" when he spoke to Ms. Schultz by telephone on June 11, 2021, but he feigned ignorance when asked whether he continued to hold the funds in trust. Taking into account the number of times he had been asked whether he was still holding the funds, the panel does not accept that there was any doubt in his mind that those funds were no longer in his trust account at the time of the conversation.

The panel was provided with the notes made by Ms. Schultz of her telephone conversation with Mr. Vyamucharo-Shawa on June 11, 2021; he himself did not make or keep any notes of the conversation.

Mr. Vyamucharo-Shawa complains that Ms. Brown was not ready to close on the re-scheduled date of April 21, 2021 (because her office still had not received the wire-transferred funds), yet is willing to overlook or ignore the fact that both his trust letter and eTransfer #1 (with a misspelled middle name of his client and a blank homesteads declaration) were both dated April 22, 2021 – the day after the scheduled date of closing; the closing letter itself was not provided to Ms. Brown for another day after that.

Mr. Vyamucharo-Shawa dismissed with utter incredulity and disdain the notion Ms. Brown could *possibly* have typed the word "seller" in her email sent April 23, 2021, at 3:47 PM (Ex. 4, Tab 34) by mistake. [Note: On cross-examination, when the word "seller" was pointed out to her, she was clearly taken aback; it was later clarified that while the *buyer* and his family had been long-time clients of both herself and the firm, neither she nor it had ever acted for the seller]. "How could such a mistake have been made?", he asked, then asserted that Ms. Brown "resented" his being involved in the transaction. Yet he was far more forgiving of the "few unfortunate errors" he and his office had made in both eTransfer documents, being the misspelled middle name of his client, the blank homesteads declaration, and the use of the wrong version of eTransfer #1, and the omission of a Lot number in eTransfer #2.

So while the panel is not willing to convict on this particular charge, it does not agree that the conduct of Mr. Vyamucharo-Shawa in the matter was as reasonable, justified, and beyond reproach as he suggests.

Charge 2(a): Contrary to his Undertaking, the Member did not make, and maintain on his client file, notes of phone conversations with Ms. Brown, Ms.

Schultz, the real estate agent, the daughter of the seller, or any other third parties with he had conversations regarding the matter.

Charge 2(b): Contrary to his Undertaking, the Member did not make, and maintain on his client file, notes of phone conversations and in-person meetings with his client.

Charge 2(c): Contrary to his Undertaking, the Member did not record, and maintain on his client file, detailed information about instructions received from the client or about all steps taken on his behalf.

These three charges may be conveniently dealt with together. They all pertain to records Mr. Vyamucharo-Shawa was obligated to make and keep pursuant Clauses 1 and 2 of his Undertaking.

Mr. Vyamucharo-Shawa argues that: (a) there is no "standard form" of acceptable notes required of a lawyer, and (b) in terms of "notes", his practice is to make hard copies of emails to and from the individuals involved in the transaction and place them on his file.

There is no question that it is prudent for a lawyer to make and keep detailed notes of communications with others with whom they deal. If their conduct comes under formal scrutiny for any reason, or if they are sued for malpractice, a well-documented file is their best defence. For most practitioners, how they choose to document their files is generally up to them.

There are exceptions, however.

A lawyer preparing a Will or a Power of Attorney may be called to testify in court if the document they prepared is challenged on the basis that the testator or donor lacked the requisite capacity to execute the document. Absent detailed notes confirming that the lawyer made appropriate inquiries regarding capacity, they are likely to be in for some unwelcome criticism from the judge hearing the matter.

An enhanced level of note-taking may be imposed on a lawyer by the Society pursuant to, or as a consequence of, disciplinary proceedings or deficiencies uncovered during an audit or a practice review.

Or the member may give a formal Undertaking to comply with specific note-taking requirements dictated by the Society, again in conjunction with one or more its regulatory procedures.

Mr. Vyamucharo-Shawa initially asserted that the provisions cited above are "vague" and open to differing interpretations; the panel does not agree – the

requirements are clearly enough stated, and straining to find "ambiguities" where none actually exist does not render them objectively ambiguous.

Mr. Vyamucharo-Shawa also complains that no templates were ever provided to him by the Society (acknowledging, however, that he never asked). On this point, the panel notes that it would have taken but a few minutes to fashion his own Word template which captured the required data elements. Strict compliance would not have been nearly so onerous as Mr. Vyamucharo-Shawa infers it would have been.

[Note: Exhibit 27 is comprised of two memoranda which were prepared on a very simple fill-in-the-blanks form used, and perhaps even created by, Mr. Donaldson.]

There are numerous emails created by Mr. Vyamucharo-Shawa on the real estate file in question (Exhibit 12). Only a handful even come close to complying with even the most generous interpretation of Clauses 1 and 2 of his Undertaking.

In the context of these charges, it is not without irony that while Mr. Vyamucharo-Shawa disputes that the accuracy of the notes made by Ms. Schultz of their telephone conversation on June 11, 2021, he has no notes of his own to substantiate any different version of what transpired.

The most troubling aspect of this particular charge – one raised by the Member himself – is the length of time during which he has been practising under supervision (including the constraints imposed by his Undertaking) and during which monthly reports (based, apparently, on reviews of every one of his open files) have been submitted by his Supervisor, with *no* adverse comments being made by anyone associated with the Society on the sufficiency of his record-keeping practices (and, in particular, his compliance with his Undertaking). Although Mr. Vyamucharo-Shawa did not expressly argue that the Society has tacitly condoned – for a considerable time – the practices for which he is now being prosecuted, such an argument would certainly find support in the evidence.

The panel finds that the facts underpinning these three charges have been proved to the requisite standard, and that the conduct constitutes professional misconduct. Further, there can be no serious doubt that his particular system of "note-taking" falls short of the strict requirements of his Undertaking.

The panel finds Mr. Vyamucharo-Shawa guilty of these three charges. However, taking into account the very legitimate concerns noted above with respect to the lack of Society intervention and oversight over an extended period of time (more than seven years), the panel is of the view that any sanction to be imposed ought to be at the very low end of the range.

Dispositions (Citation 1)

66. (a) Charges 1(a), 1(b), and 1(c) – Not Guilty
(b) Charges 2(a), 2(b), and 2(c) – Guilty

Citation 2 – The Rempel Complaint

67. Citation 2 arose in the context of a litigation matter for which Justice Rempel had been appointed as the case management judge, and the Member represented one of the parties.

Evidence (Citation 2)

68. With respect to the Justice Rempel complaint, Mr. Donaldson said that he had not received responses to any of his communications addressed to Justice Rempel (through his assistant) following the receipt by the Society of the initial complaint dated May 12, 2023 (Exhibit 4, Tabs 73 & 74).

69. The September 8, 2023 letter from the Member to Justice Rempel (Exhibit 4, Tab 79), was not requested by the Society, and Mr. Donaldson never received any explanation from Mr. Vyamucharo-Shawa as to why it was sent. The tone and content of the letter were, however, of concern to Mr. Donaldson, and he did ask why he wrote certain things the way he did.

70. With respect to court policy regarding the recording of proceedings, Mr. Donaldson:

(i) reviewed Q&A postings titled "Virtual Hearings – Manitoba Courts" on the "Manitoba Courts" public website; [Note: Exhibit 4, Tab 76 was "last updated on November 30, 2021", and Exhibit 4, Tab 77 was "last updated on June 12, 2024"; both documents contain the statement "***Note – Recording the court proceeding on a personal device is strictly prohibited.***", printed in Bold and Italics.]

(ii) did not investigate whether the Manitoba Court of King's Bench had issued any written directives specifically to lawyers on the point; and,

(iii) did not consider that lawyers were permitted to have mobile phones in court while the general public was not.

71. Mr. Kenneth Mandzuik was counsel opposite Mr. Vyamucharo-Shawa in the matter which gave rise to Citation 2. The salient points from his testimony include:

(a) Mr. Mandzuik described his long-standing interest in human rights, equality, and equity issues, and his extensive involvement (often in leadership roles) with the former Sexual Orientation & Gender Identity Conference of the Canadian Bar Association ("CBA"), the CBA

Governance Committee, the CBA Equity Committee, the Equity Committee of the Society, and the Manitoba Association of Rights & Liberties. He said he hoped he would be alive to any sort of racist or discriminatory comment by a presiding judge during a hearing, then went on to say there was "not even a hint" of conduct of that nature on the part of Justice Rempel during any of the case management conferences (CMCs) that he participated in.

(b) Mr. Mandzuik testified he includes his preferred pronouns ("he/him") every time he introduces himself in a court setting. He was personally involved with the development of the court pronoun policy that has been in place in Manitoba since 2021. Mr. Mandzuik said the now-ingrained practice is a courtesy to others in the courtroom (particularly those who may self-identify as other than cisgender) and was adopted to promote equity and inclusion; nobody is singled out by the need to declare their own preferred pronouns because *everybody* is required to do it. He noted that the Practice Direction (dated June 17, 2021 and entitled "Forms of Address for Parties, Counsel and the Judiciary of the Court of Queen's Bench") was published on the "Manitoba Courts" website, and was disseminated to the profession by the Society and by the Manitoba Bar Association.

(c) In pre-COVID days, CMCs were held in Chambers with only the judge and the lawyers present. CMCs were typically not recorded unless one of the parties was self-represented, in which cases the proceeding would be held in a courtroom rather than in Chambers. During COVID, CMCs were conducted via MS Teams.

(d) Mr. Mandzuik arranged the CMC on March 20, 2023, and was therefore the designated "Host"; he did not make any adjustments to the default settings on MS Teams. Mr. Mandzuik assumes MS Teams has a "Record" function, but he has never personally recorded anything on the platform.

(e) Although a phone is typically not needed for an MS Teams meeting, Mr. Mandzuik recalls Mr. Vyamucharo-Shawa using a phone on one occasion because the audio function on the platform was not working for him. He does not know which CMC this happened on.

(f) Mr. Mandzuik was not aware that Mr. Vyamucharo-Shawa was recording the March 20, 2023 CMC; he has never listened to the recording. He first learned of the existence of the recording when Mr. Vyamucharo-Shawa provided an Affidavit of Documents from his client in which it was disclosed. Mr. Mandzuik is certain he "would have said something" at the time had he known the CMC was being recorded. He testified that at the next CMC (held on May 9, 2023),

Justice Rempel said he was "taken aback" and "shocked" by the admission of Mr. Vyamucharo-Shawa that a "secret recording" of the CMC had been made by him. Mr. Mandzuik agreed Mr. Vyamucharo-Shawa had admitted making the recording, and had not "hidden it".

(g) Mr. Mandzuik said all subsequent CMCs that he participated in on the matter were held in a courtroom (generally because one or more of the parties were present) and, pursuant to the usual court practice in those circumstances, were recorded.

(h) Mr. Mandzuik was aware that Mr. Vyamucharo-Shawa had sent Justice Rempel a letter requesting certain amendments to CMC Memorandum No. 1 (Exhibit 4, Tab 75), but did not recall an amended memorandum being issued. [Note: Mr. Mandzuik did request a correction to the spelling of his law firm name, but a review of the memoranda for the remaining CMCs discloses that the requested correction not was made until March 7, 2024 (Memoranda No. 8).]

(i) On cross-examination, it was put to Mr. Mandzuik that Mr. Vyamucharo-Shawa had ordered him to leave his office (where an Examination for Discovery had been convened) because Mr. Mandzuik had described him as "acting like a child" and as being a "know nothing with an 8th grade education". Mr. Mandzuik described those accusations as "a complete falsehood". He also flatly denied having (at the same discovery) given Mr. Vyamucharo-Shawa copies of three postings (memes and photos) from his personal Facebook page, noting in passing that they "appeared to be screenshots" (presumably because the name "Ken Mandzuik" appears in the search box at the top of each image). [Note: The three pages were not admitted into evidence at that time, but were marked as "Exhibit A for Identification". They were never entered as evidence in the cause.]

72. With respect to Charges 1(a) through 1(d) in Citation 2, Mr. Vyamucharo-Shawa testified that he had never received any notice, from any source, advising that the recording of CMCs was "prohibited".

73. Mr. Vyamucharo-Shawa says he was aware of and had reviewed the "Virtual Hearings" postings to the Manitoba Courts website (Exhibit 4, Tabs 76 and 77); he had concluded that they were directed to the general public, not to lawyers. He cited several Q&As in support of this conclusion, such as the description of a "witness" and "What is an oath or affirmation?", which every lawyer would obviously know. [Note: He seems to have overlooked, or perhaps ignored, the statement on Page 4/4 which reads: *Counsel*/court participants should dress as if attending an in-person proceeding in a

courtroom", followed by links to "QB – Court Attire" and "PC – Court Attire", both of which are formal "Notices" dealing exclusively with the dress codes to which lawyers appearing in those courts are expected to adhere. On cross-examination, his attention was directed to a question at the bottom of Page 1/4 which reads (in Bold): "2. What training is available for Microsoft Teams *for lawyers and litigants*?" (Emphasis added.) He maintained his position that the posting was for the information of the public only and that nothing in it prohibited lawyers from recording court proceedings.] Mr. Vyamucharo-Shawa believes the admonition on the last page of each posting – which reads: "***Note – Recording the court proceeding on a personal device is strictly prohibited.***", (printed in Bold and Italics) – applies to the general public only, and not to lawyers (who are officers of the court). He notes further that neither of the documents have any of the characteristics of a formal "Notice to the Profession" or a formal "Practice Direction" issued by the Court of King's Bench.

74. With respect to the recording itself, Mr. Vyamucharo-Shawa insisted that "*everyone* at the meeting *knew* it was being recorded". He said he noticed a "Record" button on his screen and, when he pressed on it, a recorded voice said: "This meeting is being recorded." He also said a round, red dot on the screen (indicating recording was in progress) remained illuminated throughout the meeting. Mr. Vyamucharo-Shawa says he joined the MS Teams meeting through his smartphone, and flatly denies joining on his computer then recording the audio portion of the meeting on a personal device; he also disputes the Society characterization of his recording as "private".

75. Counsel directed Mr. Vyamucharo-Shawa to the "Case Management Conference Memorandum (No. 2)" with respect to the CMC on May 9, 2023 (Exhibit 31, Tab 5) and, in particular, to the section headed "IV. Secret Recording of the Case Management Conference on March 20, 2023 by Mr. Shawa". [Note: This was one of the three CMCs for which there was no court-arranged recording and, therefore, no official transcript.] Mr. Vyamucharo-Shawa strenuously denies the accuracy of the statement "Mr. Shawa did not offer any explanation as to why he made this secret recording", and insists he *did* offer an explanation. He expressed disbelief at the statement, asserting that "everyone knew Teams was being recorded", and explained to Justice Rempel that the Court of King's Bench, being a "superior court of record", *must* record, and maintain a permanent record of, all of its "proceedings". He said he assumed that the session was already being recorded by either the Court or Mr. Mandzuik (or perhaps both), and they should not be the only ones because he also had an obligation to protect the rights and interests of both litigants and the public at large. Further, he says that he noted, parties cannot appeal an order made at a CMC to the Manitoba Court of Appeal without proof that a transcript of the proceeding had been ordered.

76. Mr. Vyamucharo-Shawa testified that after giving his explanation for having made the recording, Justice Rempel "looked surprised", but did not immediately respond. He said he would consult with the Chief Justice and the Associate Chief Justice of the King's Bench then "get back" to Mr. Shawa, but he never did.

77. Mr. Vyamucharo-Shawa states that the recording of CMCs later "became the norm", and he believes his principled stand before Justice Rempel was the reason for the change in court practice and policy. [Note: The panel heard no other evidence supporting this belief.]

However, a close review of the eight CMC Memoranda on the record discloses the following:

(a) The only attendees at the first three CMCs were Justice Rempel, Mr. Vyamucharo-Shawa, and Mr. Mandzuik. No court clerk or court reporter was present on any of the occasions. The first CMC was the one surreptitiously recorded by Mr. Vyamucharo-Shawa, with disclosure of the recording being made (to Justice Rempel) at the second.

(b) CMC No. 4 had the same three attendees, but an official recording *was* made and a transcript produced.

(c) The last four CMCs (No. 5 through No. 8) were attended by Justice Rempel, Mr. Vyamucharo-Shawa, counsel for all parties, and either two or three of the parties. Transcripts were produced for all four sessions.

With the exception of CMC No. 4, the recording (or not) of the session fits the dichotomy described by Mr. Mandzuik – no recording when only the judge and the lawyers were present; recording when clients were also present.

While the material before the panel does not contain any evidence that Justice Rempel ordered that CMC No. 4 be recorded by a court reporter, he clearly had the authority to make that order, and the likelihood is that he did so.

78. With respect to Charges 2(a) & 2(b) in Citation 2, counsel then directed Mr. Vyamucharo-Shawa to the recording of the CMC (which had been played on the second day of the hearing during the testimony of Mr. Donaldson) and specifically to the excerpt set out on Page 50 of these Reasons. When asked why he did not disclose *his* recording to Justice Rempel at that time, he replied that there was "no need" because "everyone already knew" it was being recorded on MS Teams. He noted also that the specific comment of Justice Rempel was that there was "no court reporter present" (which, of

course, everybody present already knew), *not* that there was no "record" being made.

79. Counsel then directed Mr. Vyamucharo-Shawa to a series of communications between Mr. Donaldson and himself (Exhibit 49) wherein Mr. Donaldson asks him – three times, in addition to his two previous requests – to explain *how* the impugned recording was made. An email dated September 21, 2023, sent to Mr. Donaldson on behalf of Mr. Vyamucharo-Shawa, reads: "Counsel Vyamucharo-Shawa has dictated the following response to your email instant: 'It was a video recording of the audio of the Case Management Conference Court Proceeding.'" Mr. Vyamucharo-Shawa conceded in his testimony that his response was "kind of confusing, reading it now". He said his smartphone was displaying the participants, and he thought he was recording both the video and the audio, but when the file began downloading (automatically) at the conclusion of the hearing, he received only the audio component.

80. With respect to Charges 3(a) through 3(e) in Citation 2, all which relate to his letter to Justice Rempel dated September 8, 2023 (Exhibit 4, Tab 79), Mr. Shawa testified that it was prompted by:

(a) the second paragraph of a September 5, 2023 letter from Justice Rempel to himself, another counsel, and one of the parties (Exhibit 4, Tab 80), which reads: "In the circumstances it is now incumbent on Mr. Shawa to confirm forthwith if he still intends to proceed with a motion seeking my recusal on September 15, 2023 at 10:00 AM."; and,

(b) Paragraph 4 of "Case Management Conference Memorandum (No. 5)", regarding the CMC on June 23, 2023, which reads: "I note that Mr. Shawa took strong exception to my position that the recusal motion would not be heard today or that I was prepared to make further orders today while the recusal motion was extant. My response is that the motion must be supported by affidavit evidence and written briefs which need to be filed well in advance of the motion date. Given that today is the last day of the court Term, which Mr. Shawa is aware of, there is no way to schedule a hearing date for the motion before September."

81. The letter is two typewritten pages, plus a signature page which also indicates the other eight individuals to whom it was copied. It would serve no purpose to reproduce the entire letter in these Reasons; the following three paragraphs, being those specifically referenced in Citation 2, will suffice:

"My Lord, our Chambers is grievously disturbed by your continuing to hog and not doing the needful. More disturbing is your needless improper interference with access to justice by the litigants and their counsel. You recently but after the

Recusal Motion had been filed, put a ban and or restriction on our office from obtaining transcripts of recordings in court proceedings before you (and as such we could not prepare for appeals from your needless odd Orders). In your correspondence with the Law Society of Manitoba you appear to be denying this, but we have written evidence of what we speak of. This is despicable and unbecoming of a person holding your office.

"Our client has impeached your impartiality and in our client's view, and in the view of elementary principles of law including natural justice, all men are equal before the law, and or no one is above the law; the needful thing for [Justice Rempel] to do, in the meantime is to unseat himself and refer these files back to the appointing authority and or, the Chief Judge, and or the Chief Justice.

"A Charge has been laid against you. You are the accused person. This accused person wants evidence to be filed before him. This same person wants to adjudicate upon the charge against himself. This same person wants to sit in judgment upon many other aspects of matters out of which the charge of judicial misconduct and or bias and or partiality arose. Your unsigned Order is a pertinent example of your partiality and judicial misconduct. Our client says no."

82. Mr. Vyamucharo-Shawa goes on to say that his client will not be filing any further materials on the recusal motion "until we receive your written confirmation that you have 'unsat' yourself", and that she will not "deal with the deadlines and other impositions in the nature of penalties including the odd Order" set out in Paragraphs 5 and 6 of "Case Management Conference Memorandum (No. 5)".

83. Mr. Vyamucharo-Shawa testified that:

(i) the "needless improper interference with access to justice" statement in the letter was in reference to the "ban" he alleges Justice Rempel placed on transcripts of the CMC that he needed to pursue appeals of the various Orders set out in the CMC Memorandum (No. 5); he provided Exhibits 53, 55, 56, and 66, being email exchanges he had with Veritext Canada (a private company contracted to produce transcripts of Manitoba court proceedings from audio recordings made by court personnel) which he says support his suspicions of a "ban" imposed by Justice Rempel;

(ii) he is unsure (now) what "correspondence" from Justice Rempel to the Society he was referring to in his letter; he is not aware of any such correspondence after the initial complaint letter dated May 12, 2023;

(iii) the third paragraph of the letter (quoted above) is in reference to longstanding judicial authority which dictates that a recusal motion is to be heard and decided by the judge whose recusal is being sought; he says he explained the proper procedure to his client, who

nonetheless refused to follow it, and he was therefore trying (with the letter) to convince Justice Rempel to voluntarily recuse himself without the necessity of a formal motion; and,

(iv) the "accused person" and "pertinent example of your partiality and judicial misconduct" comments in the letter were rooted in his personal background and his firmly held belief that "when you see an injustice from anywhere, you need to address it"; he did not consider the tone of the letter "disrespectful" – he was simply standing up against an injustice as he saw it.

84. Charges 4(a) and 4(b) in Citation 2, which relate to the letter from Mr. Vyamucharo-Shawa to Mr. Donaldson dated November 27, 2023 (Exhibit 4, Tab 83), which was his response to the letter from Mr. Donaldson dated November 7, 2023 (Exhibit 4, Tab 82).

This letter is comprised of three typewritten pages. Again, it would serve no purpose to reproduce the entire letter in these Reasons; the following six paragraphs, being those specifically referenced in Citation 2, will suffice:

"Your enquiry reminds me of cultural differences we may have in this multicultural and or diverse society. It also reminded me of the cultural setting in which I grew up and really formed the person that I am today. It can be summed up as follows, and allow me to quote: 'If a man comes into my hut and defecates on the floor, what do I do? Do I shut my eyes? No! I take a stick and break his head'. That is what a man does." Now Mr. Donaldson, take this as figurative discourse.

...

"I liken Justice Rempel's conduct towards me and my client to that in which a man bursts into another man's hut and contaminates the space. The only appropriate response to such an act is to react in such a courtesy fashion that the polluter is left in no doubt about your disgust about his conduct as falling below acceptable standards. What did Justice Rempel do to warrant the matters contained in a. to d. of your letter? Among other things:

1. He publicly insulted my gender enquiring as to whether I was a he or she. When I took him to task he responded that he is directed to make such enquiries by his superiors. When I indicated to him that I was Mr. Paul Vyamucharo-Shawa; he further insulted me and likened me to a child with a grade 8 education. I take it that comments, jokes, or innuendos that cause humiliation, embarrassment or that by their very nature, and their context, are clearly embarrassing, humiliating or offensive, and also constitute harassment and are discriminatory. I was livid;

   [Note: It seems highly unlikely that both Justice Rempel and Mr. Mandzuik would have used exactly the same language – "a child with a grade 8 education" – to insult Mr. Vyamucharo-Shawa, on two separate occasions in two separate settings.]

> 2. While presiding as a Case Management Conference Judge he chose to do nothing instead of keeping decorum in the Court Room. When Opposite counsel [Mr. Mandzuik] was discourteous to me and called me a "know nothing person" Justice Rempel permitted opposite Counsel to abuse and be discourteous to me. ...
>
> ...
>
> 6. While presiding as Case Management Conference Judge he needlessly and improperly interfered with my obtaining transcripts of Court proceedings for purposes of Appeal.
>
> ... I believe my representation of my client has been to date fearless and without favour and what may otherwise appear to be not courteous or respectful in its general tone is in fact in the particular circumstances courteous and justifiable response; if a presiding officer comes into the courtroom and contaminates the space those present may get infected."

85. Mr. Vyamucharo-Shawa testified that:

(i) By writing to Justice Rempel, he had no intent to offend but, rather, wanted to convey to him that "his conduct was unacceptable".

(ii) The reference to "defecation" was intended to convey his feelings of "being defiled" by the conduct of Justice Rempel; it was not meant to be taken literally, just to convey that the conduct was unacceptable and that Justice Rempel "had to be removed" from his role as the CMC judge.

(iii) He was aware of the Practice Direction with respect to preferred pronouns, but took offence at the "tone of voice" of Justice Rempel which he (Mr. Vyamucharo-Shawa) found to be "demeaning and offensive, with discriminatory undertones" (in particular with respect to the "Grade 8 education" comment). Mr. Vyamucharo-Shawa also objected to *how* Justice Rempel asked about his preferred pronouns, leaning back in his chair as he posed the question.

86. Although asked by his counsel to describe *exactly* what Justice Rempel did or said which he found to be offensive, Mr. Vyamucharo-Shawa struggled to provide a coherent response. He said that Justice Rempel and Mr. Mandzuik "took turns humiliating him", that Justice Rempel failed to "control" Mr. Mandzuik and maintain decorum during the CMC (notwithstanding his several complaints), that he was offended when Mr. Mandzuik handed him the materials marked as Exhibit A for Identification, that Justice Rempel asked him "Are you a man or a woman?", that they both (Justice Rempel and Mr. Mandzuik) said words to the effect of "You know nothing", and that

Justice Rempel had never amended an earlier CMC Memorandum as he (Mr. Vyamucharo-Shawa) had requested.

87. Counsel then asked for particulars of his understanding of the "Grade 8 education" and "a man or a woman" remarks, but again Mr. Vyamucharo-Shawa struggled to provide a coherent response.

88. With respect to Particular 4(vi) in Citation 2 – that Mr. Vyamucharo-Shawa had said in Exhibit 4, Tab 83 of Justice Rempel that "he had contaminated the space in the courtroom and such as to infect those present" – he testified that this was a reference to the "treatment" his client had received from Justice Rempel in the courtroom.

89. Mr. Vyamucharo-Shawa was asked whether he was concerned that the words he had used in the two letters in question (in particular, "contaminate", "pollute", and "infect") might be considered "inappropriate", he replied: "No. I wanted to convey that what was going on was unacceptable." He went on to say that the letters reflected his "style of writing" and that it was his intention that the recipients would "get his message in no uncertain terms" and "would not be left with any other impression". Mr. Vyamucharo-Shawa stated unequivocally that he believed the particular words he used were *not* "improper" but, in fact, "proper".

90. As noted earlier in these Reasons, Mr. Vyamucharo-Shawa produced a series of emails involving himself, Veritext Legal Solutions ("Veritext"), and the Transcription Services Unit ("TSU) which he asserts support the accusations of "needless improper interference" which he had levelled against Justice Rempel. The substantive portions of the emails read:

> Vymucharo-Shawa to TSU Wednesday, July 5, 2023 5:42 PM – "Attached please find Court Transcript Order Request on a priority basis ('3 days' as opposed to 3 business days). Please note that this Request if for two separate hearing, one on June 9, 2023 and the second on June 23, 2023. If you can not produce the transcript on of (*sic*) before Saturday, July 8, 2023, please convert this request to an expedited request."
>
> [Note: The attached request form asks for one "Paper Transcript" and one "Electronic Transcript – PDF" for a proceeding to be heard in the "Court of Appeal". The reverse side of the form, under the heading "Transcript Requirements for the Court of Appeal", reads (in part): "The requestor and the respondent are responsible for ordering their own copies **in addition** to what is outlined below:" (Emphasis in the original.) For an "Appeal (no trial) – Reasons for decision", the Court of Appeal requires one paper copy and one PDF. As is evident from the form itself, this is all that Mr. Vyamucharo-Shawa ordered on July 5, 2023.]

Veritext to TSU Thursday, July 6, 2023, 8:23 AM – "EXPEDITED – June 9, 2023 & June 23, 2023"

TSU to Veritext Thursday, July 6, 2023, 9:07 AM – "We need [word missing, "permission" maybe] from Justice Rempel on this one and he is not sitting until next week, so it might be a bit of a wait."

Veritext to Vyamucharo-Shawa Thursday, July 6, 2023, 4:47 PM – "This is the communication that we have had with TSU regarding the matter of [names of parties removed].

Unfortunately when the Justice's permission is required, there is nothing we can do on our end to expedite your transcript request. Once we have received permission however, we can provide you with Expedited or Priority service to get you your transcript request as fast as possible."

TSU to Veritext Monday, July 10, 2023, 8:43 AM – "Justice Rempel gave his permission to produce. It's loaded [Happy Face emoji]"

TSU to Vyamucharo-Shawa Monday, July 10, 2023, 2:38 PM – "Before we proceed with your order, I just wanted to confirm that you would like Priority service, as per your conversation with my colleague earlier? And, did you require the 5 paper copies? *To file an appeal with the COA, you need 1 Paper and 1 PDF copy for the court* ***in addition to any copies of your own***." (Emphasis added.)

Vyamucharo-Shawa to TSU Monday, July 10, 2023, 2:52 PM – "Yes. Priority Service. *We need just 1 Paper Copy and 1 PDF*" (Emphasis added.)

Vyamucharo-Shawa to Veritext Wednesday, July 19, 2023, 11:18 AM – "We expected to receive two transcripts on or before July 13, 2023 and we have not received anything. Please advise whether Justice Herbert Rempel has revoked his authorization to have the audio release by transcription services of a court house."

Veritext to Vyamucharo-Shawa Wednesday, July 19, 2023, 11:31 AM – "As per your conversation with my colleague earlier this month, you did not request a copy for yourself. I can see that you requested priority service with one paper and one pdf. Which both automatically go to the court."

Vyamucharo-Shawa to Veritext Wednesday, July 19, 2023, 5:03 PM – "To whose attention did you send it. May we have copies?

The appeal has not yet been filed.

This is urgent."

Veritext to Vyamucharo-Shawa Thursday, July 20, 2023, 3:18 AM – "Thank you for choosing Veritext for your recent proceeding. Attached is an invoice for the services provided."

Veritext to Vyamucharo-Shawa Thursday, July 20, 2023, 8:37 AM – "The documents would have been sent to the court. If you would like a copy for yourself, you will need to put in another request."

Vyamucharo-Shawa to Veritext (cc Mr. Donaldson) Thursday, July 20, 2023, 11:50 AM – "You have not rendered any service to us so far. We requested provision to us; you provided service to persons of your choice. Did Justice Rempel once again entervine (*sic*) and directed you to send the Transcript to him or to the Court? We are not amused. Who instructed you to forward our matters to the Court? What do you mean automatically? and where did you get that? PLEASE NOTE THAT THIS HAS NEVER HAPPENED BEFORE. IN THE PAST, WE REQUESTED AND YOU PROVIDED TO US; WHAT CHANGED IN THIS MATTER?

So far you have failed us as to PRIORITY.

Kindly provide the requested Transcripts preferably before close of business today. The (*sic*) may be useless otherwise."

Veritext to Vyamucharo-Shawa Thursday, July 20, 2023, 12:31 PM – "My name is [name removed], and I am the Transcription Manager for Veritext. Your concerns have been escalated to me by the staff at the Winnipeg office.

It looks as though this matter was ordered for Court of Appeal. As per our requirements set out on the request form there is a PDF and paper copy sent to be filed to courts **in addition** to your copies. When asked to confirm your order, you stated that you only required the 1 PDF and 1 paper which would only be court copy requirements and none for yourself at Priority service. The order submitted on July 10 which would have the job completed on July 13 which it was.

This is a common mix-up that requestors have when ordering. We can send you a PDF or Word copy if you would like. I have attached both the email communication and your order form for your review."

Analysis (Citation 2)

91. The allegations and the assessments of the panel are:

Charge 1(a): By privately recording, on a personal device, a case management conference being conducted virtually, without the assent or knowledge of the presiding Judge, other counsel and their clients, the Member failed to carry on the practice of law and to discharge his responsibilities to others honourably and with integrity.

Charge 1(b): By privately recording, on a personal device, a case management conference being conducted virtually, without the assent or knowledge of the presiding Judge, other counsel and their clients, the Member failed to treat the court with candour, courtesy, and respect.

Charge 1(c): By privately recording, on a personal device, a case management conference being conducted virtually, without the assent or

knowledge of the presiding Judge, other counsel and their clients, the Member failed to be courteous and civil and act in good faith with all persons with whom he had dealings.

Charge 1(d): By privately recording, on a personal device, a case management conference being conducted virtually, without the assent or knowledge of the presiding Judge, other counsel and their clients, the Member contravened the *Code* by recording the conversations between himself, his client, and other lawyers without first informing the participants of his intention to do so.

Charge 2(a): By failing to disclose to the judge and to the other participants that he was making a recording of the case management conference when the judge noted that no record was being made of the proceeding, the Member failed to carry on the practice of law and to discharge his responsibilities to others honourably and with integrity.

Charge 2(b): By failing to disclose to the judge and to the other participants that he was making a recording of the case management conference when the judge noted that no record was being made of the proceeding, the Member failed to treat the court with candour, courtesy, and respect.

These six charges may be conveniently dealt with together. They all pertain to his surreptitious recording of a case management conference held via MS Teams on March 20, 2023.

Assent or Knowledge

92. In his direct evidence, on cross-examination, and in his communications with the Society, Mr. Vyamucharo-Shawa offered several explanations of how he made the recording of the March 20, 2023 CMC, each varying in one or more particulars with each of the others. None of the explanations are believable, or even credible.

93. In her cross-examination, Ms. Klein posited a theory which – unlike any of those proffered by Mr. Vyamucharo-Shawa – accounts for each of the unique features of the recording referenced at Exhibit 4, between Tabs 75 and 76:

    (a) The electronic file provided to the Society by Mr. Vyamucharo-Shawa has a ".mov" extension. It was developed by Apple in the 1990s, and is one of its most common audio-video formats. Mr. Vyamucharo-Shawa says he made the recording on his iPhone.

    (b) At the very beginning of the file, there is a very brief video component. Ms. Klein suggested it showed a hand; a brief glimpse of a ceiling can also be discerned. Ms. Klein theorized that the iPhone was face up on a desk or table, at which time the "Record" button would be clearly visible.

The first few seconds of the file are consistent with Mr. Vyamucharo-Shawa activating the "Record" function then immediately turning the device over so that the screen was then facing down (which would explain why the only image showing on the remainder of the file is a black screen).

[Note: Following a short break during the closing submission by his counsel, the panel was advised that – after asking Society counsel whether he could record the submissions, and after being advised that he could not – Mr. Vyamucharo-Shawa was observed recording the proceedings on his phone. He had activated the recording function then turned the phone face down on the table in front of him. These actions bore a striking resemblance to the theory previously advanced by Ms. Klein regarding how the recording of the March 20, 2023 CMC was made, effectively erasing any doubts the panel may have harboured on the point.]

(c) While a recording made using the MS Teams platform will occasionally pick up background noise made by a participant (the clickety-clack of fingernails on a keyboard, the rustling of papers, or pet/child noises), it would be unlikely to pick up the pen-on-paper scratching noises of someone making handwritten notes which can be heard on the recording. The greater likelihood is that paper on which the person was writing was in very close proximity to the device upon which the recording was being made.

(d) The recording made by Mr. Vyamucharo-Shawa is of relatively poor quality, such that it must be played at or near maximum volume to be heard properly. A recording made on the MS Teams platform would have been of a much higher quality.

94. The panel finds that it is far more likely that the recording was made in the manner theorized by Ms. Klein than by any of the methods described by Mr. Vyamucharo-Shawa.

95. Mr. Vyamucharo-Shawa challenges the allegation that the recording was made without the "assent or knowledge of the presiding judge"; he stated repeatedly and adamantly that "*everyone* at the meeting *knew* it was being recorded".

The evidence in support of the Society allegations comes from three sources:

(a) in his letter to Mr. Vyamucharo-Shawa dated May 12, 2023 (Exhibit 4, Tab 74), Justice Rempel writes: "I was taken aback by your

admission that you had indeed recorded our discussion that day [March 20, 2023] without notice to me or to Mr. Mandzuik.";

(b) at 14:25 on the recording (Exhibit 4, Tab 5), Justice Rempel can clearly be heard stating: "Well, we don't have a record because there is no court reporter here recording this.", to which Mr. Vyamucharo-Shawa replies: "No. No. No. I know that, My Lord."; and

(c) Mr. Mandzuik – the only other participant at the CMC – testified that he was not aware the Member was recording the proceeding, and "would have said something" if he had been.

While (b) above is arguably specific to whether there was a *court reporter* recording the meeting, the panel considers it noteworthy that Mr. Vyamucharo-Shawa said nothing about the recording *he himself* had initiated. In this regard, his repeated insistence that "everybody knew" the session was being recorded simply defies belief.

The panel considers the explanation Mr. Vyamucharo-Shawa gave in his testimony for remaining silent about his own recording to be either wilfully blind or deliberately disingenuous.

The panel considers it highly unlikely that *both* Justice Rempel and Mr. Mandzuik would have:

(a) not heard the audible notice, *and*

(b) not noticed the visual notice, *and*

(c) not noticed the round, red "Recording" dot that Mr. Vyamucharo-Shawa says was clearly visible on the screen throughout the meeting.

[Note: There remains the possibility that they are both lying on all three of these points, but the panel considers that even less likely than the possibility they both missed all of the "signs" that a recording was in progress.]

The panel is satisfied that lack of "assent or knowledge" to the recording on the part of Justice Rempel has been proved to the requisite standard.

Prohibition on Recording / "Conversation" vs. "Court Proceeding"

96. The principles supporting the modern approach to statutory interpretation are set out above. While the provisions of the *Code* are, admittedly, not "statutes", these principles provide robust guidance on how they ought to be interpreted.

97. The online *Cambridge Dictionary* [http://dictionary.cambridge.org] has several definitions for the word "conversation". They include:

(a) talk between two or more people in which thoughts, feelings, and ideas are expressed, questions are asked and answered, or news and information is exchanged;

(b) informal, usually private, talk in which two or more people exchange thoughts, feelings, or ideas, or in which news or information is given or discussed; and,

(c) discussion with someone about a particular subject.

The panel finds that a CMC pursuant to the *King's Bench Rules* cannot be conducted without the participants engaging in a "conversation", such that the prohibition against recording a "conversation" found in Rule 7.2-3 of the *Code* applies with equal force to "court proceedings", which necessarily include CMCs. The panel is satisfied that this finding is amply supported by the modern approach to statutory interpretation.

The panel notes that when this proposition (that a "conversation" was somehow distinct from a "court proceeding") was put to both Mr. Donaldson and Mr. Mandzuik in cross-examination, both appeared perplexed (although Mr. Donaldson said that he did, nonetheless, "consider" it). When the question was put to Mr. Mandzuik, he stated: "I don't know that I've ever had it delineated like that. I don't know that – I've never, I've never distinguished the two between a court proceeding and a conversation. I don't know why it would ever come up".

"Superior Court of Record"

98. Mr. Vyamucharo-Shawa submits that a "superior court of record" must, to maintain that status and avoid becoming an "inferior court", make and keep a "recording" of each and every one of its "proceedings". He cites nebulous common law principles, developed prior to 1867 and adopted into Canadian law at the time of Confederation, in support of this submission.

The submission is both specious and fallacious. The concepts on which the Member relies were developed at a time when neither video nor audio recording technology existed. The only "permanent" medium a superior court of record had available to it to comply with its obligation to create and keep a "record" of its proceedings was paper; whether the record was printed (the Gutenberg movable-type printing press had been perfected in the early 15th

century), typewritten (although typewriters did not come into widespread use until the mid-1880s), or handwritten, the medium was *always* paper.

Mr. Vyamucharo-Shawa conflates a requirement to make a "record" with a requirement to make a "recording". Even when the suggestion was put to him, he adamantly refused to even acknowledge the possibility that a typewritten CMC Memorandum, prepared by or at the direction of the judge and distributed to all those in attendance, could be considered a "record" of the proceeding which would meet the record-keeping obligations of the court.

One does not have to delve too deeply into Manitoba legislation to find support for this proposition.

The Freedom of Information and Protection of Privacy Act (Manitoba) defines a "record" as:

> a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records

The corresponding term in the *King's Bench Rules* is "document"; the definition in *KBR* 30.01(1) reads: "'document' *includes* a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device". (Emphasis added.) [Note: The legislative drafters evidently felt it was unnecessary to expressly stipulate that a piece of paper with information printed, handwritten, or typewritten on it would come within the meaning of the word "document".]

The online *Law Dictionary* [https://thelawdictionary.org], referenced in his Book of Authorities by counsel for the Member, has a definition of "record" which reads (in part): "A written account of some act, transaction, or instrument, drawn up, under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which It relates. There are three kinds of records, viz.: (1) judicial, ...; (2) ministerial, ...; (3) by way of conveyance... A written memorial of all the acts and proceedings in an action or suit in a court of record. The record is the official and authentic history of the cause, consisting in entries of each successive step in the proceeding, chronicling the various acts of the parties and of the court, couched in the formal language established by usage, terminating with the judgment rendered in the cause, and intended to remain as a perpetual and unimpeachable memorial of the proceedings and judgment. ... A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'records of the court,' and are of such high and supereminent authority that their truth is not to be called in question. ..."

Letter from the Member to Justice Rempel dated September 8, 2023

99. **Charge 3(a):** In a letter to the case management judge, the purpose of which was stated to be to persuade him to recuse himself from further participation while the motion seeking recusal was pending, the Member failed to treat the court with candour, courtesy, and respect when asserting the Judge was "continuing to hog and not doing the needful".

Charge 3(b): In a letter to the case management judge, the purpose of which was stated to be to persuade him to recuse himself from further participation while the motion seeking recusal was pending, the Member failed to treat the court with candour, courtesy, and respect when asserting the Judge was engaging in "needless improper interference with access to justice by the litigants and counsel".

Charge 3(c): In a letter to the case management judge, the purpose of which was stated to be to persuade him to recuse himself from further participation while the motion seeking recusal was pending, the Member failed to treat the court with candour, courtesy, and respect when asserting the Judge had ill-motive in making orders, particularly to make it so that the Member could not prepare for appeals from what he described as "needless odd orders".

Charge 3(d): In a letter to the case management judge, the purpose of which was stated to be to persuade him to recuse himself from further participation while the motion seeking recusal was pending, the Member failed to treat the court with candour, courtesy, and respect when asserting the Judge had in communications to the Society denied facts the Member had asserted to be true and his conduct in doing so was "despicable and unbecoming of a person holding your office".

Charge 3(e): In a letter to the case management judge, the purpose of which was stated to be to persuade him to recuse himself from further participation while the motion seeking recusal was pending, the Member failed to treat the court with candour, courtesy, and respect when asserting the Judge was "an accused person" and that his hearing the recusal motion would be "a pertinent example of your partiality and judicial misconduct".

These five charges may be conveniently dealt with together. They all pertain to his letter addressed to Justice Rempel dated September 8, 2023 (Exhibit 4, Tab 79). The letter was copied to the Chief Justice and an Associate Chief Justice of the Court of King's Bench, the Chief Executive Officer of the Society, the complaints resolution counsel appointed by the Society to investigate the Justice Rempel complaint (Mr. Donaldson), his Supervisor, his client, and the two lawyers then representing the litigants. [Note: Mr. Mandzuik had withdrawn as counsel some time prior to this date, although the formalities documenting the withdrawal had not yet been finalized.]

While the reactions of the individuals copied on the letter are not in evidence, it is clear from the Transcript of the CMC conducted by Justice Rempel a week later on September 15, 2023 (Exhibit 31, Tab 11, Page T3, Line 39 to Page T4, Line 30 and Page T5, Line 25 to Page T6, Line 2) that he found the letter "highly disturbing and improper".

To this day, Mr. Vyamucharo-Shawa is unrepentant, still firmly believing the judge deserved the dressing-down he had administered in his letter because he believed then, and continues to believe, that Justice Rempel had mistreated him by engaging in conduct that was "humiliating, embarrassing and discriminatory".

The panel notes, parenthetically, that even if Mr. Vyamucharo-Shawa subjectively believed he was doing nothing wrong when he composed his letter to Justice Rempel, the fact that his unique cultural background might explain his behaviour does not mean that this panel must either excuse or condone it. As stated in *Appellant A (Kalo)*: "... the fact that there may be an explanation for his behaviour, even one that may be understandable, does not make that behaviour acceptable". In other words, explanation and understanding do not excuse behaviour which, viewed through an objective lens, amounts to professional misconduct. (*Applicant A (Kalo)* - Appeal of Admission Decision No. 20090826B, para. 181)

Letter from the Member to the Society dated November 27, 2023

100. **Charge 4(a):** In a letter to the Society, provided in response to the complaint of Justice Rempel to the Society, the Member made a number of complaints, comments, and assertions regarding the conduct of Justice Rempel and what the Member asserted was a proper and appropriate response to that conduct, the Member failed to treat the court with candour, courtesy, and respect.

Charge 4(b): In a letter to the Society, provided in response to the complaint of Justice Rempel to the Society, the Member made a number of complaints, comments, and assertions regarding the conduct of Justice Rempel and what the Member asserted was a proper and appropriate response to that conduct, the Member had contravened the Code by sending correspondence that is abusive, offensive, and otherwise inconsistent with the proper tone of professional communications from a lawyer.

These two charges may be conveniently dealt with together. They both pertain to his letter to the Society dated November 27, 2023 (Exhibit 4, Tab 83).

The comments above with respect to the principle established in *Applicant A (Kalo)* apply here as well.

Assertions of bias are one thing; allegations of racism and discrimination (presumably based on at least in part on the "prohibited grounds" enumerated in *The Manitoba Human Rights Code*) is in another category entirely. Such

serious allegations demand corroboration, particularly when levelled against a sitting judge.

The Member knows, or at least ought to know, that investigations into the conduct of federally-appointed judges (of which Justice Rempel is one) are within the sole purview of the Canadian Judicial Council (CJC); the Society has no jurisdiction to sanction judges at any level of court in Manitoba. The CJC cannot remove a judge from the Bench (only Parliament has that authority), but upon receipt of a complaint it can conduct a formal investigation into their conduct and can recommend sanctions, including removal. On cross-examination, Mr. Vyamucharo-Shawa indicated – for the first time – that he had complained to the CJC about Justice Rempel; what, if anything, came of that complaint is not in evidence.

101. Mr. Vyamucharo-Shawa asserts that the lack of response to his March 29, 2023 letter to Justice Rempel (Exhibit 24) supports his belief that he was being treated differently (and disrespectfully), and was being discriminated against, by Justice Rempel. The panel acknowledges the possibility, but notes that there may be other, reasonable explanations for the non-response. One that emerges from an examination of the Manitoba Courts registry print-outs (Exhibits 29 and 30), and the contents of the binder marked as Exhibit 31, is that there is not a single mention of the letter in any of the exhibits (the latter of which includes certified transcripts of all of the case management conferences which post-dated the letter), suggesting the possibility that it never actually came to the attention of Justice Rempel. [Note: This seems unlikely, given the evidence of Mr. Vyamucharo-Shawa that he hand-delivered the original copy to Judges Chambers on the second floor of the Old Law Courts Building, and the evidence of an email from him to the Assistant to Justice Rempel with an electronic copy of the letter attached, but the possibility nonetheless remains.]

102. On this same point, Mr. Vyamucharo-Shawa was adamant that there was *no* discretion on the part of a CMC judge to refuse or decline to make changes to a CMC Memorandum when requested to do so by a party or their counsel. On this point, he is just wrong.

King's Bench Rule 50.08(5) (Revised memorandum) reads:

"A party who disputes the accuracy of a pre-trial memorandum must, within 14 days after receiving the memorandum, notify the pre-trial judge of the objection. If necessary, the pre-trial judge may re-open the pre-trial conference to address the objection. The pre-trial judge *may* issue a revised memorandum *if he or she determines* that the original memorandum was incorrect in any way." (Emphasis added.)

King's Bench Rule 50.1(3) (Orders and directions) reads:

"The judge presiding at a case management conference may, on motion by any party or on his or her own motion, without materials being filed, make any order or give any direction that he or she considers necessary or advisable to facilitate the just, most expeditious and least expensive determination or disposition of the proceeding."

King's Bench Rule 50.1(4) (Powers) reads:

"Without restricting the generality of subrule (3), the judge presiding at a case management conference *may exercise all of the powers of a pre-trial judge under Rule 50*." (Emphasis added.)

Clearly, a CMC judge *can* consider a request for amendments to a CMC Memorandum and decline to issue a "revised memorandum". It is certainly not beyond the realm of possibly that that is exactly what happened in this case.

103. The recording of the March 20, 2023 CMC – which the panel has found was undertaken surreptitiously and without the knowledge of the other participants – indicates Justice Rempel addressing both Mr. Vyamucharo-Shawa and the other participant (Mr. Manduik) courteously and respectfully throughout the hearing. Although there is no audio to accompany any of the transcripts of the subsequent CMCs (Exhibit 31, Tabs 7, 9, 11, 13, and 16), that pattern of courteous and respectful discourse appears to have continued, even when Justice Rempel was obviously annoyed with the lack of progress on the matter and the lack of compliance with several of his orders.

104. If the recording of the March 20, 2023 CMC is representative of the demeanour of Justice Rempel when he was unaware he was being recorded, it is difficult to accept that he exhibited the egregious conduct ascribed to him by Mr. Vyamucharo-Shawa even when the proceeding was, to his express knowledge, being recorded. Justice Rempel would have been exhibiting a classic "Jekyll & Hyde" split personality if he had actually said the things attributed to him by Mr. Vyamucharo-Shawa. The panel notes in passing that it heard no evidence suggesting that Justice Rempel and Mr. Vyamucharo-Shawa, at *any* time, interacted in a setting in which there were no others present. If the egregious statements attributed to Justice Rempel were actually made, *somebody* else would have heard them.

[Note: While Mr. Vyamucharo-Shawa is adamant the comments he attributes to Justice Rempel were made in "open court", there is not a single reference to him handling any of the several "motion list" appearances on the Manitoba Court Registry Printouts relating to the underlying actions. In fact, there is no record of Justice Rempel being involved in those actions *at all* until he was appointed Case Management Judge. While Mr. Vyamucharo-Shawa asserts that the printouts contain errors, the panel notes a highlighted excerpt from

Black's Law Dictionary in his Book of Authorities states: "The court's records are presumed accurate and cannot be collaterally impeached."]

105. With respect to the Veritext emails (Exhibits 53, 55, 56, and 66), if the intent of this evidence was to establish that Justice Rempel imposed a "ban" on two CMC transcripts and "needlessly interfered" with the ability of Mr. Vyamucharo-Shawa to pursue an appeal of the various orders made by Justice Rempel during the CMCs on June 9, 2023 and June 23, 2023, it falls far short of doing so. It, in fact, appears to be yet another unwarranted attack on the integrity of Justice Rempel and yet another clumsy attempt to demonize him and his handling of the underlying case.

106. The only points the emails establish are:

(a) Justice Rempel was "not sitting" on Thursday, July 6, 2023 (hardly a surprise given that the Court of King's Bench was then several weeks into its annual "long break");

(b) within 13 minutes after the Court Office opened on Monday, July 10, 2023, Justice Rempel had already authorized the release of the audio file to Veritext;

(c) Veritext sent the transcripts *to the Manitoba Court of Appeal*, not to the King's Bench, and definitely not to Justice Rempel personally; and,

(d) the reason Mr. Vyamucharo-Shawa did not also receive a copy of the transcript he had ordered was due *solely* to the manner in which *he* had completed the order form; Justice Rempel had *nothing* to with this apparently "common mix-up that requestors have when ordering". After being expressly told that the Court of Appeal needed one paper copy and one PDF, Mr. Vyamucharo-Shawa confirmed that was what he wanted (and, not to belabour the point, what was produced and sent by Veritext three days later).

107. Mr. Vyamucharo-Shawa spent a considerable amount of time endeavouring to establish, through reference to several disparate documents and through his own testimony with respect to CMC discussions which had (at his request) taken place "off the record", that Justice Rempel had failed to comply with an "undertaking" he had given to Mr. Vyamucharo-Shawa to "review" the recusal request with his Chief Justice and "get back" to Mr. Vyamucharo-Shawa with respect to that consultation. The purpose of leading all of this evidence was never apparent to the panel.

108. In CMC Memorandum (No. 4) (Exhibit 31, Tab 8), at Paragraph 7, Justice Rempel writes: "Mr. Shawa asked me to reconsider my decision to remain

seized of this matter given my complaint to the Law Society about his conduct at the first case management conference. I gave an undertaking to counsel that I would review this request with the Chief Justice. Mr. Mandzuik noted on the record that he takes the position that my recusal from this case is not justifiable." A review of the first 37 pages of the transcript of the June 9, 2023 CMC (Exhibit 31, Tab 7) does not yield any evidence of Justice Rempel giving this undertaking, leading to the conclusion that it must have been given during the off-the-record discussion (forcefully requested by Mr. Vyamucharo-Shawa) at the end of the session (Page T37, Line 23 to Page T38 to Line 30).

109. At the outset of the CMC two weeks later (on June 23, 2023), Mr. Vyamucharo-Shawa advised Justice Rempel and Mr. Mandzuik that he had, that morning, filed a motion seeking that Justice Rempel recuse himself from the matter. It is clear from the transcript (Exhibit 31, Tab 9) that Justice Rempel had not seen the Notice of Motion, and that no supporting evidence had been filed.

110. With respect to the undertaking mentioned in CMC Memorandum (No. 4), the exchange at Page T2, Line 16 to Page T4, Line 25 is enlightening:

"MR. VYAMUCHARO-SHAWA: Yes. So, My Lord, I have before you, before the court, an urgent motion that I wish to address you on. It was prepared yesterday and it was filed this morning and I was waiting for Your Lordship to – to open, and it's before –

THE COURT: Well, I obviously have not seen this document. What is your motion about?

MR. VYAMUCHARO-SHAWA: My Lord, it's something that I haven't done in my 40 years of practice, and it's very difficult for me, but it is something that I'm instructed to do by my client, and it's my prayer to you, My Lord, this morning, that prior to proceeding with the case management case that the urgent motion be conceded by Your Lordship.

THE COURT: Okay, can you – can you –

MR. VYAMUCHARO-SHAWA: I'm mindful –

THE COURT: – not keep in suspense and tell me what your motion is about?

MR. VYAMUCHARO-SHAWA: Noting that we just have an hour, My Lord –

MR. MANDZUIK: It's recusal.

MR. VYAMUCHARO-SHAWA: – my prayer – my – my prayer is that – I'm at your disposal, you give us time when you'd hear the matter – the – the motion is for your recusal, My Lord.

You will recall at the last case conference out of record I pleaded with you, I begged you for your consideration of certain matters, you had said that you would be consulting with the Chief Justice and we would hear from you. I got the case memorandum, there was no consideration of the concerns that my client, the applicant, as well as myself had put before you.

So we are here, My Lord, forced to do that which I've never done in my 40 years of practice.

THE COURT: Okay, so to be clear, Mr. Shawa, you elected not to comply and your client elected not to comply with the orders that I issued at case conference no. 4 as they are set out in my memo, and rather than comply, you bring a motion 30 seconds before midnight seeking my recusal. You elected not to comply.

MR. VYAMUCHARO-SHAWA: I – I wouldn't say that, My Lord. That would be contempt of court. I wouldn't – I wouldn't – I wouldn't elect to do that, My Lord. It's the nature of the –

THE COURT: Well, are you suggesting that the contents of my case conference memorandum no. 4, which you got, was just a series of recommendations and suggestions, or were they orders?

MR. VYAMUCHARO-SHAWA: I'm not suggesting anything, My Lord. What I'm saying the nature of my instructions from my – my client stood in the way of complying, me as counsel complying with those directions, the motion for recusal, it goes against the grain. You – you instructed – tough as that would be to impeach a sitting judge, I apologize, My Lord, I said it would be difficult, and at the same time you are continuing to present information, document before the same justice who is being impeached or you are being instructed – you are being instructed to impeach, It's a contradiction in terms, My Lord. I will give other reasons, but there are also – it's part of the motion before you.

We have filed case brief after case brief, case management brief, and none of the items requested in the case management briefs that were filed have been dealt with by the court. It's my client instructions that it's futile in the circumstances to be filing further case management briefs when they are being ignored by the court, including the very last one that I filed. You know that very last – the last – yes, let me – let me stop there, My Lord. It's very difficult for me. This is the first – I've never done before, but as your correctly teach us, My Lord, we have to represent our plans in *seriatim* without fear or favour and live with the consequences, and I'm prepared for that, My Lord.

MR. MANDZUIK: Thank you, Mr. Shawa.

MR. VYAMUCHARO-SHAWA: Having said that, My Lord, my prayer before you if – if need be – I'm accordingly helpless. I don't know how I can proceed representing my client before Your Lordship when my client is of the opinion that in the eyes of reasonable people, right-minded, and the informed members of the public there would apprehension of bias.

But I – it was difficult for me, My Lord, to make a decision one way or the other, so here I am at your mercy to be guided. I just want you to know, My Lord, I'm not – I'm not happy I'm doing this. Most way you remember from the last appearance before you how I begged and prayed before you, My Lord.

THE COURT: *And I had a response ready because I did speak to the Chief Justice and I was prepared to share –*

MR. VYAMUCHARO-SHAWA: My Lord, I – I hope –

THE COURT: *– to share his comments with you.*"

(Emphasis added.)

111. Clearly, Justice Rempel *did* – as he had undertaken – consult with the Chief Justice, and *would have* shared the results of that consultation with Mr. Vyamucharo-Shawa had the CMC not been derailed by the discussion of the late-filed and incomplete motion to recuse. The complaints and arguments of Mr. Vyamucharo-Shawa on this very narrow point ring hollow, have no merit, and are of no assistance to the panel in understanding the propriety of the impugned contents of his letters dated September 8, 2023 (to Justice Rempel) or November 27, 2023 (to Mr. Donaldson).

112. Mr. Vyamucharo-Shawa also testified at length about Justice Rempel making numerous orders in the absence of full argument from the counsel for the parties. He implies that the orders were made capriciously and without jurisdiction, arguing that the powers of a judge presiding over a CMC are not as broad as those available to a judge presiding over a pre-trial conference (PTC). A cursory review of the *King's Bench Rules* – in particular, Rules 50.1(3), (4), and (5) under the heading "Case Management", and Rules 50.05(3), (4), and (5) under the heading "Pre-Trial Management" – shows he is clearly wrong on this point; again, his position that the tone and content of his letters were a proper and fully justifiable response to the conduct of Justice Rempel falls flat.

113. The panel has difficulty accepting the position asserted by Mr. Vyamucharo-Shawa that his conduct ought to be excused because, in his culture, it would not only be acceptable but lauded.

114. While he was born, raised, and educated abroad, at the time of the events giving rise to Citation 2, Mr. Vyamucharo-Shawa had been living in Canada for about 38 years (since 1985) and had been working as a lawyer in Manitoba for almost 34 years (off and on since 1989). Surely during that lengthy time, he had gained some understanding that what may have been acceptable in his native culture could well be viewed quite differently in his

adopted home and his adopted legal community. [Note: On cross-examination, he denied having acquired any such understanding.]

115. While cultural background was not raised as defence to the disciplinary proceedings at issue in *Histed v Law Society of Manitoba*, 2021 MBCA 70, the panel notes a number of parallels between the conduct of Mr. Histed in that case and the conduct of Mr. Vyamucharo-Shawa in this one. Madam Justice Spivak wrote:

> "[27] The Panel found the appellant guilty of the four counts of professional misconduct in the manner alleged by the Law Society.
>
> [28] The Panel reviewed the statements made by the appellant in advancing the allegations in the context of all the evidence, and the applicable *Code* provisions and commentaries. The Panel found that the appellant embellished and misrepresented his communications with the Crown.
>
> [29] The Panel assessed whether there was a factual foundation for the allegations.
>
> [30] ... The Panel was satisfied that the appellant at no time had an adequate evidentiary basis for [the claim that the Crown had caused the death of an assault victim]. ... The Panel similarly held that there was no evidentiary foundation for the extortion allegations and the appellant completely misrepresented the content of [the email giving rise to the allegations].
>
> [31] Given these pivotal underlying findings, the Panel determined that the appellant breached his duty of civility... In concluding that the appellant was guilty of professional misconduct, the Panel found that his conduct was not based on a reasonable and honest assessment of the evidence and could not be justified by the duty of resolute advocacy. The Panel also found that the appellant's responses to the Law Society contained irrelevant personal attacks and were 'peppered with statements insulting to ... the character and motivation of both [the Assistant Deputy] and of [the Crown]' and were 'prima facie breaches of the Code.' The Panel considered it significant that the appellant did not modify his behaviour after receiving the Law Society's reminder letter, but rather 'continued to advance a suite of baseless allegations.'"

116. The panel cannot escape the very distinct impression that Mr. Vyamucharo-Shawa, to this day, lacks insight into the impact his behaviours and his words – spoken and written – have on others in the profession with whom he deals on a daily basis. [Note: For example, his email dealings with Ms. Brown (in particular his patently unreasonable demand for a personal undertaking to remit sale proceeds), his aggressive email to one of the new counsel on the matter being conducted by Justice Rempel (Exhibit 54), his equally aggressive, to say nothing of misguided, emails to Veritext, and his unauthorized and unexplained failure to attend a day of hearing in this matter scheduled for December 11, 2024, are but four examples of this lack of self-awareness.]

117. The panel is satisfied that each of the individual charges set out in Citation 2 has been proved on a balance of probabilities, and that in each instance the conduct constitutes professional misconduct. [Note: The panel specifically rejects the defence arguments that the recording of the March 20, 2023 CMC: (a) was not done "privately", and (b) did not involve the use of a "personal" device, both as alleged in Charges 1(a) through 1(d).]

Dispositions (Citation 2)

118. (a) Charges 1(a), 1(b), 1(c), and 1(d) – Guilty
(b) Charges 2(a) and 2(b) – Guilty
(c) Charges 3(a), 3 (b), 3(c), 3(d), and 3(e) – Guilty
(d) Charges 4(a) and 4(b) - Guilty

Citation 3 – The C Complaint

119. Citation 3 arose in the context of a fee dispute between the Member and a former client. It escalated to a complaint by Mr. C to the Society, then to an action commenced by the Member against Mr. C in the Court of King's Bench, based on the allegedly defamatory allegations made by Mr. C in his complaint.

Evidence (Citation 3)

120. On cross-examination, Mr. Donaldson was asked whether the Society expected that a member would accept being defamed by a complainant. He responded that the Society would expect a member to deal with complaints made against them within the context of the complaints process. Mr. Donaldson acknowledged that the Statement of Claim Mr. Vyamucharo-Shawa caused to be issued against Mr. C was not the "sole basis" for issuing the claim (that is, it also included a claim for the recovery of unpaid legal fees), but noted that the defamation aspect of the claim was (or at least appeared on its face to be) based solely on the allegations made by Mr. C in his complaint about Mr. Vyamucharo-Shawa to the Society. Mr. Donaldson was not aware that Mr. C had filed a Statement of Defence in the matter, nor was he aware of Mr. Vyamucharo-Shawa asking Mr. C to withdraw his complaint.

121. With respect to Citation 3, Mr. Vyamucharo-Shawa says Mr. C was a "walk-in" client for whom he had not previously acted. Another gentleman was also present; he assisted with the translation of the instructions from Mr. C and the advice from Mr. Vyamucharo-Shawa. For an agreed flat fee, Mr. Vyamucharo-Shawa prepared and registered a Builder's Lien for some unpaid work Mr. C had completed. He says he advised Mr. C at their initial meeting that if the Land Titles Office issued a Notice to Lienholder (also referred to as a "30-day Notice") to him, further legal work (specifically, the filing of a Statement of Claim and registration of a Pending Litigation Order) would be required to protect his interests, and that he would need to return at least a few days before the 30-day deadline to provide his further instructions.

122. Mr. Vyamucharo-Shawa testified that Mr. C and his companion returned on the afternoon of the 30th day and wanted all of the required work done that day. He says he dropped what he was doing and completed all of the necessary tasks within 2-3 hours.

123. The C Complaint was received by the Society, via email, on August 18, 2023 (Exhibit 4, Tab 85). It was forwarded to Mr. Vyamucharo-Shawa by Mr. Donaldson on August 30, 2023, together with a "14-day letter" seeking his "comments and an explanation of the circumstances" (Exhibit 4, Tab 86).

124. In his email response to Mr. Donaldson on September 22, 2023, Mr. Vyamucharo-Shawa:

(a) states that Mr. C "is lying";

(b) describes in general terms the two distinct legal services which he performed for Mr. C; and,

(c) concludes with: "[Mr. C] is a fraud. I challenge him to submit to handwriting expert immediately. Our firm is consulting and is about to sue him for defamation. His conduct is despicable."

125. The Statement of Claim – naming Mr. Vyamucharo-Shawa as the plaintiff and Mr. C as the defendant – issued on October 11, 2023 (Exhibit 4, Tab 91); on the last page, the typewritten date ("September 18", 2023) has been crossed out and the actual date of filing ("October 11", 2023) handwritten (presumably by the Deputy Registrar) in its place. The claim is comprised of two distinct elements – the sum of $3,883.66, representing unpaid legal fees and disbursements, and damages for defamation. Paragraphs 3 through 10 deal exclusively with the first element; Paragraphs 11 through 14 deal exclusively with the second element.

126. Each of Paragraphs 11, 12, and 13 make specific reference to the complaint Mr. C lodged with the Society; in each of Paragraphs 11 and 12, Mr. Vyamucharo-Shawa asserts that the allegations of forgery and embezzlement made by Mr. C to the Society were, in addition, "relayed" or "communicated" to "other persons".

127. On October 11, 2023 (Exhibit 4, Tab 90), Mr. C emailed a copy of the Statement of Claim to Mr. Donaldson, asking that it be added to his complaint file. He writes: "As mentioned in previous emails regarding Mr. Shawa's actions to extort additional funds via fraudulent documents and agreements that never existed."

128. On October 12, 2023 (Exhibit 47, PDF pp. 090-091), Mr. Donaldson forwarded the above email to Mr. Vyamucharo-Shawa along with a letter

requesting, among other things: "6. I understand that you have filed a defamation lawsuit against Mr. [C], the sole basis of which appears to be his having filed this complaint. Please explain why you filed that lawsuit."

129. Mr. Vyamucharo-Shawa testified that he disagreed with this characterization of the basis for the lawsuit, then and still today. He said he had never before, and has never since, sued someone because they had complained to the Society about his conduct. He said Mr. C had "crossed the line" with his complaint and, more disturbingly, had publicly disseminated his hurtful and false allegations.

130. While he cannot recall the exact date (it was sometime after he had received a copy of the C Complaint from the Society), Mr. Vyamucharo-Shawa says he went to his local barbershop for a haircut. As soon as he arrived, the barber and other customers in the shop began peppering him with questions about what they had heard; specifically, that he stood accused of fraud, embezzlement, theft, and forgery, and was about to be struck from the Rolls of the Society. He says he was so shocked and dismayed by what he was hearing that he left without getting his haircut. He decided instead to go grocery shopping at a nearby store which he described as "popular with the ethnic and immigrant community" in Winnipeg.

131. Mr. Vyamucharo-Shawa says he had just entered the store when a cashier mentioned his difficulties with the Society. After another acquaintance stopped him in an aisle and repeated the same allegations of disreputable conduct on his part, Mr. Vyamucharo-Shawa says he went directly to his office and began drafting the Statement of Claim; he insists that it was these other interactions – not the C Complaint itself – which prompted him to sue Mr. C for both the unpaid legal account and the defamatory accusations he was spreading in the community. Mr. Vyamucharo-Shawa said he was anxious to clear his name and restore his public reputation, and that his issuance of the Statement of Claim was his way of putting the matter into the "public domain".

132. Mr. Vyamucharo-Shawa also testified that the allegations of dishonesty on his part had spread beyond the barbershop and the grocery store. He was asked to step down from the governing council of his faith community, and was told by many longstanding clients that they no longer felt comfortable with him handling their legal affairs and were taking their business elsewhere.

133. Mr. C filed a Statement of Defence on October 23, 2023 (Exhibit 47, pp. 070-074). In it, he:

(a) denies entering into a "Retainer Agreement" with Mr. Vyamucharo-Shawa on April 27, 2023;

(b) disputes the circumstances described by Mr. Vyamucharo-Shawa with respect to the work required in response to the 30-day Notice;

(c) disputes the circumstances described by Mr. Vyamucharo-Shawa with respect to their meeting at which the (now disputed) second invoice was given to Mr. C; and,

(d) in response to the defamation claims, acknowledges sending a complaint to the Society about Mr. Vyamucharo-Shawa, then writes: "The Law Society of Manitoba may have shared [his] complaint with others." [Note: While Mr. C does not expressly deny that he *too* may have disseminated the allegations of dishonesty levelled by him against Mr. Vyamucharo-Shawa "to others" apart from the Society, the above suggestion could reasonably be construed as an attempt to shift liability for the "publication" of the defamatory statements onto the Society.]

134. Mr. Vyamucharo-Shawa testified that he intends to move for summary judgment in his case against Mr. C, but did does not want to do so until these disciplinary proceedings have concluded. [Note: Although the pleadings closed over 18 months ago, the Manitoba Courts Registry shows no filings in the matter since the Affidavit of Service of the Statement of Defence on Mr. Vyamucharo-Shawa on October 31, 2023.]

Analysis (Citation 3)

135. The allegations and the assessment of the panel are:

The Member, after receiving a copy of the Complaint filed with the Society by Mr. C, prepared and caused the Court of King's Bench to issue a Statement of Claim against Mr. C in which, in addition to an amount due for unpaid legal fees, claimed general, punitive, exemplary, and other damages based on, and because of, the Complaint that had been filed with the Society.

136. The allegations made by Mr. C against Mr. Vyamucharo-Shawa in the Complaint to the Society are egregious and, frankly, outrageous; they included accusations of misrepresentation, embezzlement, forgery, extortion, fraud, and predation upon, and exploitation of, newcomers to the community.

137. It is important to note that Mr. Vyamucharo-Shawa was not charged by the Society with having engaged in any of this impugned conduct. One can surmise that the Society did not give much (if any) credence to the allegations.

138. No one questions the proposition that a lawyer defamed by a former client has the same rights as any other Manitoban to sue for damages. In this case, it was the *timing* of the preparation and issuance of the Statement of Claim that

led to Citation 3. On its face, the Statement of Claim was prepared on or about September 18, 2023 (about three weeks after Mr. Vyamucharo-Shawa had received a copy of the Complaint from the Society) and filed on October 11, 2023 (about three weeks later). Both of these actions predate the completion by the Society of its investigation of the Complaint.

139. It is clear from Paragraphs 11 and 12 of the Statement of Claim that the Complaint to the Society was, at a minimum, *one* of the bases for issuing it, but the paragraphs are broadly enough phrased to support a conclusion that publication by Mr. C of the defamatory comments – beyond the Society *alone* – is being alleged.

140. And this, frankly, is the nub of what has vexed the panel from the outset with regard to this Charge. Mr. Vyamucharo-Shawa, in his various accounts of the scenes in the barbershop and later the grocery store, has been fairly consistent in terms of what was said on each occasion. He clarified that both incidents occurred on the same day, and within a relatively short time span; he says he was so disturbed by what he heard, that he began his drafting of the Statement of Claim the very same day. [Note: He did tell Mr. Donaldson in an email sent on September 22, 2023 (Exhibit 4, Tab 87), that: "Our firm is consulting and is about to sue him for defamation." There was no indication in the materials or in his testimony that such a consultation took place.] It is reasonable to assume that it may have taken Mr. Vyamucharo-Shawa several days to get the document into a form appropriate for filing with the court, putting the date of the barbershop and grocery store incidents even closer in time to the date of his receipt of the Complaint to the Society.

141. It may be that, due to the passage of time, Mr. Vyamucharo-Shawa cannot accurately place the incidents on the chronological timeline between August 30, 2023 and October 11, 2023. By his own evidence, however, there *had* to be 10-12 individuals, at least some of whom were personally known to him, who could have been called to testify before the panel. As this did not happen, we can come to no other conclusion than that the defence to Citation 3 has not been made out.

142. Of necessity, the investigation of complaints received by the Society concerning the conduct of its members must be conducted in confidence and with the utmost discretion.

A robust complaints-handling process is one of the pillars of self-regulation and, in all cases, that process must be respected.

143. The panel empathizes with Mr. Vyamucharo-Shawa, and recognizes how upsetting the whole situation had to have been for him. However, we are satisfied that the factual allegations in Citation 3 have been proved to the requisite standard.

144. As with respect to Charges 1(b) and 1(c) of Citation 1, the question remains whether his conduct was sufficiently egregious to support the serious finding of professional misconduct. The panel is satisfied that it was.

145. While Mr. Vyamucharo-Shawa was adamant that he felt compelled to file the Statement of Claim immediately – as a first step to restoring his good name in the community – the fact remains that he has taken no steps to ready the matter for a hearing on the merits during the more than 19 months since the pleadings closed. He claims he was holding off taking any further steps in the action because he was waiting to "confront his accuser" before this panel. Even though he has known for at least six months that the Society would not be calling Mr. C to testify in this proceeding, his suit against Mr. C has remained dormant. There was nothing stopping him from serving a notice on Mr. C to make disclosure of documents or serving him with a notice to attend an examination for discovery. With the benefit of hindsight, it is clear that there was no compelling necessity for Mr. Vyamucharo-Shawa to formally initiate his action against Mr. C before the Society had concluded its investigation; he could have waited, and there would have been no prejudice to his ultimate rights of recovery had he done so.

146. The panel finds Mr. Vyamucharo-Shawa guilty of this charge. As with Charges 2(a), 2(b), and 2(c) in Citation 1, however, the panel is of the view that any sanction to be imposed ought to be at the very low end of the range.

Dispositions (Citation 3)

147. The panel finds the Member guilty of the charge set out in Citation 3.

Credibility

148. The credibility of Mr. Vyamucharo-Shawa has been put squarely at issue in these proceedings, by himself and by the Society. It is therefore incumbent on the panel to assess his credibility, in accordance with the long-standing authorities on the point, and to explain its reasons for that assessment.

149. His oral testimony at the hearing was at times compelling and at other times exasperating. It was compelling during the parts of his direct examination when he displayed genuine emotion when talking about the discrimination (both overt and subtle) he has endured during his many of years of practice and about his perceptions of betrayal and, indeed, "persecution" on the part of the Society in its responses to, in particular, the C Complaint. However, it was exasperating during much of both his direct examination and his cross-examination, when – in the face of persistent and repeated admonitions from the panel to focus his responses on the questions being asked – he doggedly persisted in lengthy monologues detailing his longstanding (and, in connection with the matters *actually* at issue in these proceedings, largely irrelevant)

disagreements with the Society, the Courts, and other members of the local bar.

150. The panel is particularly concerned with what it perceives to be a refusal, or perhaps an inability, on the part of Mr. Vyamucharo-Shawa to accept responsibility and accountability for conduct which was clearly and demonstrably unacceptable. This is yet another reason why the panel believes that his evidence is generally unreliable.

151. When the explanations now being offered for:

(a) his failure to respond to reasonable requests from Ms. Brown and Ms. Schultz regarding the status of the sale proceeds in his trust account;

(b) his communications to Justice Rempel and the Society with respect to what, if established, would be egregious misconduct on the part of a sitting judge; and,

(c) the issuance of a Statement of Claim against a former client who (allegedly) spread vicious, defamatory lies to many other individuals in his community,

it seems axiomatic that it would be incumbent on Mr. Vyamucharo-Shawa to produce (or at least *try* to produce) *some* evidence to corroborate his allegations.

152. As noted above, there is *no* evidence that Mr. Vyamucharo-Shawa was ever alone with Justice Rempel. At the early CMCs, Mr. Mandzuik was always present; at the later ones, one or more of Mr. Mandzuik, other counsel, a court reporter or a court clerk (perhaps both), and one or more of the clients were present. Yet the only witness called to testify was Mr. Mandzuik, and he flatly denied that Justice Rempel had behaved inappropriately towards Mr. Vyamucharo-Shawa at any time; none of the other potential witnesses were called by the defence.

153. At the examination for discovery held at the office of Mr. Vyamucharo-Shawa on June 6, 2023 (at which Mr. Mandzuik allegedly made disparaging remarks to Mr. Vyamucharo-Shawa and tossed the Exhibit "A" for Identification documents on the meeting room table), there would have been present, at a minimum (in addition to himself and Mr. Mandzuik), his own client, her sister (represented by Mr. Mandzuik), and the court reporter. Again, the only witness called to testify was Mr. Mandzuik, and he flatly denied the allegations put to him on cross-examination, describing them as "a complete falsehood"; none of the other potentially corroborating witnesses were called by the defence.

154. In the absence of corroborating evidence on any of these points, the panel is left to wonder how firm the evidentiary foundation really is for the allegations of discriminatory, belittling, condescending, and humiliating utterances attributed to both Justice Rempel and, to a lesser extent, Mr. Mandzuik. There is his self-reporting, to be sure, but nothing else of substance. The recording of the CMC on March 20, 2023, does not disclose a single inappropriate comment by Justice Rempel, or by Mr. Mandzuik, and while one cannot discern subtleties such as tone of voice from a written transcript alone, there is nothing untoward in any of the five transcripts of subsequent CMCs (Exhibit 31, Tabs 7, 9, 11, 13, and 16) during which Justice Rempel and Mr. Vyamucharo-Shawa interacted. Further, there is *nothing* in the communications between Mr. Vyamucharo-Shawa and Veritext that comes even remotely close to supporting his allegations of interference on the part of Justice Rempel regarding the production and release of transcripts which Mr. Vyamucharo-Shawa asserts he needed to pursue appeals of the several impugned orders made during the CMCs. Mr. Vyamucharo-Shawa may, and very likely does, harbour deeply-rooted suspicions on all of these points, but suspicion alone constitutes neither proof nor corroboration.

155. Mr. Vyamucharo-Shawa testified that, prior to the issuance of his Statement of Claim, 10-12 individuals, at least some of whom are personally known to him, approached him regarding the allegations they had heard. But not one of these people was called to corroborate his assertion that the defamatory comments were "out in the community" *before* the Statement of Claim issued.

156. The expressed concern of the Society was that one of the bases for the issuance of the Statement of Claim was the complaint itself. In that context, evidence that the allegations of dishonesty on the part of Mr. Vyamucharo-Shawa had been directly disseminated in the community by Mr. C (that is, outside of the complaints process) would have been helpful. In fact, it may well have been a complete answer to the specific concern that the complaints process was not being respected by Mr. Vyamucharo-Shawa. As noted, no such evidence was provided to Mr. Donaldson, and none was adduced during the hearing.

157. The panel finds that his evidence on the critical points noted above is not "[in] harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable at that place and in those conditions". The panel finds further that the extensive documentary evidence before it is not sufficiently supportive of Mr. Vyamucharo-Shawa on these points to persuade it to adopt the versions of events as related by him.

Disposition

158. The panel finds Mr. Vyamucharo-Shawa:

(a) Not Guilty of Charges 1(a), 1(b), and 1(c) in Citation 1;

(b) Guilty of Charges 2(a), 2(b), and 2(c) in Citation 1;

(b) Guilty of Charges 1(a), 1(b), 1(c), 1(d), 2(a), 2(b), 3(a), 3 (b), 3(c), 3(d), 3(e), 4(a), and 4(b) in Citation 2; and,

(c) Guilty of the Charge in Citation 3.

159. Counsel are requested to contact the Discipline Committee administrator to arrange a date for a hearing on sanctions. Unless one of the parties proposes to call oral evidence, one day should be sufficient. If they so wish, counsel may provide their authorities to the administrator, in advance of the hearing, in the usual manner.

DATED this 20th day of June, 2025.

Dean Scaletta

Maureen Terra

David Rondeau

Appendix "A"

Relevant Statutory Provisions

The Legal Profession Act

Purpose

3(1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

Duties

3(2) In pursuing its purpose, the society must

(a) establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba; and

(b) regulate the practice of law in Manitoba.

Consequences of professional misconduct or conduct unbecoming

72(1) If a panel finds a member guilty of professional misconduct or conduct unbecoming a lawyer or student, it may do one or more of the following:

(c) for any period the panel considers appropriate, ...

(ii) suspend the member from practising law;

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty;

Code of Professional Conduct

Preface (excerpt)

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property of a client by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.

In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care. The lawyers of many countries in the world, despite differences in their legal systems, practices, procedures and customs, have all imposed upon themselves substantially the same basic standards. Those standards invariably place their main emphasis on integrity and competence.

...

... For its part, the Code does not attempt to define professional misconduct or conduct unbecoming, nor does it try to evaluate the relative importance of the various rules or the gravity of a breach of any of them. By enunciating principles of what is and is not acceptable professional conduct, the Code is designed to assist governing bodies and practitioners alike in determining whether in a given case the conduct is acceptable, thus furthering the process of self-government.

The essence of professional responsibility is that the lawyer must act at all times *uberrimae fidei,* with utmost good faith to the court, to the client, to other lawyers, and to members of the public. Given the many and varied demands to which the lawyer is subject, it is inevitable that problems will arise. No set of rules can foresee every possible situation, but the ethical principles set out in the Code are intended to provide a framework within which the lawyer may, with courage and dignity, provide the high quality of legal services that a complex and ever-changing society demands.

... The greatness and strength of the legal profession depend on high standards of professional conduct that permit no compromise.

The Code of Professional Conduct that follows is to be understood and applied in the light of its primary concern for the protection of the public interest. .... Inevitably, the practical application of the Code to the diverse situations that confront an active profession in a changing society will reveal gaps, ambiguities and apparent inconsistencies. In such cases, the principle of protection of the public interest will serve to guide the practitioner to the applicable principles of ethical conduct and the true intent of the Code.

Chapter 2 – Standards of the Legal Profession
2.1 Integrity
2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary
[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice, for example, committing any personally disgraceful or morally reprehensible offence including an act of fraud or dishonesty, will reflect upon the integrity of the lawyer, the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that the knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.

Chapter 5 – Relationship to the Administration of Justice
5.1 The Lawyer as Advocate
5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Chapter 6 – Relationship to Students, Employees and Others
6.1 Supervision
Direct Supervision Required
6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Chapter 7 – Relationship to the Society and Other Lawyers
7.2 Responsibility to Lawyer and Others
7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

7.2-3 A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

Undertakings and Trust Conditions
7.2-11 A lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honour every trust condition once accepted.

Commentary
[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. ...

[2] Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] *The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally.* When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. .... (Emphasis added.)

[4] *If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.* (Emphasis added.)

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. ...

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. ...

Law Society Rules

Part 5 – Protection of the Public
Division 7 – Complaints Investigation Committee

Undertaking to society
5-79(1) Where a member gives the committee a written undertaking to do or refrain from doing anything, the undertaking is deemed to be an undertaking given to the society.

Breach of undertaking
5-79(2) The failure of a member, without reasonable excuse, to comply with an undertaking given under subsection (1) may constitute professional misconduct.

Part 5 – Protection of the Public
Division 8 – Discipline Proceedings

Resolution of panel
5-96(5) After hearing and considering the evidence and representations made, a panel must make and record a resolution stating:
(a) which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the panel; and
(b) whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence.

Consequences
5-96(7) When a discipline panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student or incompetence, it may impose one or more of the penalties set out under sections 72 and 73 of the Act.

Costs
5-96(8) When a discipline panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, it may, pursuant to section 72 of the Act, order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty including, but not limited to, the following items:
(a) all reasonable disbursements incurred by the society in investigating and proceeding to the hearing;
(b) audit fees for time spent by auditors/investigators employed by the society in investigating and proceeding to the hearing, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
(c) counsel fees for time spent by lawyers in investigating and preparing for proceeding to the hearing, but excluding the time spent at the hearing of the matter, at rates set from time to time

by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
(d) $500 for each one-half day of hearing, including the hearing of motions, arguments and other proceedings; and
(e) honoraria paid to members of the discipline panel who sit on a hearing, including the hearing of motions, arguments, and other proceedings.

Court of King's Bench Rules

Rule 50 – Pre-Trial Management

Objectives

50.01(2) This Rule is intended to facilitate the just, most expeditious and least expensive determination or disposition of an action by having a judge manage the pre-trial conduct of an action by
(a) setting early trial dates and establishing timelines for the completion of steps in the litigation process;
(b) identifying and simplifying the issues to be tried in the action;
(c) avoiding wasteful or unnecessary pretrial activities;
(d) facilitating settlement of the action; and
(e) ensuring that the action is ready for trial by making orders and giving directions respecting substantive and procedural issues in the action.

Pre-Trial Judge Seized

50.05(2) Unless otherwise directed by the Chief Justice or his or her designate on the request of the pre-trial judge or a party to the action, the pre-trial judge must
(a) preside at all subsequent pre-trial conferences; and
(b) *hear all motions arising in the action*. (Emphasis added.)

Pre-Trial Powers

50.05(3) At a pre-trial conference, the pre-trial judge may, on motion by any party *or on his or her own motion, without materials being filed,* make any order or give any direction that he or she considers necessary or advisable to facilitate the just, most expeditious and least expensive determination or disposition of an action. (Emphasis added.)

Examples of pre-trial orders and directions

50.05(4) Without restricting the generality of subrule (3), the pre-trial judge may make an order or give a direction that
(a) pleadings be amended or closed by a specified date;
(b) motions be brought by a specified date;
(c) any or all motions not proceed;
(d) examinations for discovery and cross-examinations on affidavits be dispensed with or be limited in scope;
(e) examinations for discovery and cross-examinations on affidavits be completed by a specified date;
(f) establishes timelines for the completion of any step in the litigation process;
g) the parties exchange reports and resumes of any experts to be called at trial by a specified date;
(h) limits the number of experts to be called at trial or the matters to be addressed at trial by experts;
(I) simplifies the issues and eliminates frivolous claims or defences;
(j) the parties make admissions respecting facts or documents;

(k) directs a reference to be conducted on a specific issue;
(l) the parties file an agreed statement of facts or an agreed book of documents;
(m) makes provisional advance rulings on the admissibility of evidence;
(n) evidence at trial, in whole or in part, be adduced by affidavit;
(o) establishes reasonable limits on the time allowed to present evidence at trial;
(p) requires a separate trial of a claim, counterclaim, crossclaim or particular issues;
(q) establishes special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems; or
(r) the parties prepare a trial brief and trial record, including specifying the contents of a trial brief or trial record and the timelines for filing these documents.

Pre-trial judge powers respecting motions
50.05(5) The pre-trial judge may do one or more of the following with respect to any motion that he or she hears in an action that is subject to pre-trial management:
(a) *make an order on the basis of oral submissions only*;
(b) order that oral submissions be recorded;
(c) *order that written materials be filed and served*;
(d) give directions respecting the preparation and filing of an order. (Emphasis added.)

Settlement discussions without prejudice
50.06(3) Settlement discussions at a pre-trial conference are without prejudice and must not be referred to in a motion or at the trial of the action, except as disclosed in the pre-trial conference memorandum.

Pre-trial memorandum
50.08(1) After a pre-trial conference, the pre-trial judge *must* issue a memorandum that sets out the results of the conference, including
(a) *any orders made or directions given*;
(b) the issues that have been resolved and the matters that have been agreed to by the parties;
(c) the issues requiring a trial or a hearing; and
(d) the date of the next pre-trial conference, if a decision was made to schedule a further pre-trial conference. (Emphasis added.)

Reasons in case memorandum
50.08(2) If the pre-trial judge makes an order, the judge *must set out the reasons for the order* in the pre-trial conference memorandum, unless those reasons are provided elsewhere. (Emphasis added.)

Revised memorandum
50.08(5) A party who disputes the accuracy of a pre-trial memorandum must, within 14 days after receiving the memorandum, notify the pre-trial judge of the objection. If necessary, the pre-trial judge may re-open the pre-trial conference to address the objection. The pre-trial judge *may* issue a revised memorandum *if he or she determines* that the original memorandum was incorrect in any way. (Emphasis added.)

Pre-trial conference orders
50.08(7) If an order is made at a pre-trial conference, *a separate form of order is not required and the order is deemed to be pronounced on the date of the pre-trial memorandum*, or if a corrected memorandum is issued, on the date the corrected memorandum is issued. (Emphasis added.)

Sanctions
50.09(1) If a party, without reasonable excuse,
(a) fails to comply with a provision of this Rule;
(b) *fails to comply with an order or direction given by the pre-trial judge*; or
(c) is substantially unprepared to participate at a pre-trial conference or does not participate in good faith at a pre-trial conference;
the pre-trial judge *must* make one or more of the following orders:
(d) *an order for costs against the party*;
(e) an order staying an action;
(f) an order striking out all or part of a pleading or other document;
(g) an order compelling the attendance of a party at the pre-trial conference;
(h) *any other order that the pre-trial judge considers appropriate*. (Emphasis added.)

Costs
50.09(2) Costs under subrule (1) are to be fixed by the pre-trial judge and are payable immediately unless otherwise ordered.

Reasons
50.09(3) If the pre-trial judge makes an order under subrule (1), the judge *must provide reasons for the order in the pre-trial conference memorandum or on the record at the pre-trial conference*. (Emphasis added.)

Setting aside order
50.09(4) If an order is made under clause (1)(d), (e) or (f), the party against whom the order is made may bring a motion before the pre-trial judge to set aside the order.

Rule 50.1 – Case Management

Orders and directions
50.1(3) The judge presiding at a case management conference may, on motion by any party or on his or her own motion, without materials being filed, make any order or give any direction that he or she considers necessary or advisable to facilitate the just, most expeditious and least expensive determination or disposition of the proceeding.

Powers
50.1(4) Without restricting the generality of subrule (3), the judge presiding at a case management conference may exercise all of the powers of a pre-trial judge under Rule 50.

Application
50.1(5) With the exception of subrule 50.07(2) (setting trial and motion dates at first conference), the provisions of Rule 50 apply, with necessary changes, to a proceeding that is the subject of a case management conference.

Rule 51 – Admissions
Definition
51.01 In rules 51.02 to 51.06, **"authenticity"** includes the fact that,
(a) a document that is said to be an original was printed, written, signed or executed as it purports to have been;
(b) a document that is said to be a copy is a true copy of the original; and
(c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.