

**IN THE MATTER OF THE *Legal Profession Act*, R.S.A. 2000, c. L-8, and in the
matter of a Hearing regarding the Conduct of Ludmila Byron and regarding the
Conduct of Timothy Byron, both
Members of the Law Society of Alberta**

Corrected decision: A corrigendum was filed on May 22, 2015;
the corrections have been made to the text and the corrigendum
is appended to this judgment.

A. Jurisdiction and Preliminary Matters

1. On June 17, 2013, the Hearing Committee comprised of Anne L. Kirker, Q.C., Kathleen Ryan, Q.C. and Wayne Jacques C.A. reconvened at the Law Society of Alberta ("LSA") offices in Edmonton to inquire into the conduct of Ludmila Byron. The jurisdiction of the Hearing Committee to hear the matter involving Ms. Byron had previously been established on March 20, 2013. However, the hearing on that date was adjourned to allow Mr. J.P. Warner Q.C., counsel for Ms. Byron, and Ms. L MacLean, counsel for the LSA, to address a witness scheduling issue (see Hearing Committee Report Re: Adjournment of Proceedings attached).

2. When the proceedings resumed on June 17, 2013, the Hearing Committee was advised that an agreement had been reached between Ms. Byron and the LSA to tender an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction for consideration by the Hearing Committee pursuant to Section 60 of the *Legal Profession Act*, R.S.A. 2000, c. L-8. The Hearing Committee was further advised that Ms. Byron's husband and law partner, Timothy Byron, faced the same citations arising from the same circumstances and had also reached an agreement with the LSA as to facts and an admission of guilt. Because the facts agreed to for Mr. Byron incorporated facts agreed to by Ms. Byron, it was proposed that this Hearing Committee accept jurisdiction to adjudicate Mr. Byron's matter as well. The Hearing Committee was advised that the proposal for proceeding in this manner had been discussed with the Chair of the Conduct Committee and that he was agreeable if the Hearing Committee determined that Ms. Byron's Statement of Facts Admission of Conduct Deserving of Sanction was acceptable.

3. Exhibits 6 through 50 in the matter of the conduct of Ms. Byron were entered by consent and are indexed in Appendix A to this report. The Hearing Committee then considered the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction of Ms. Byron

(Exhibit 50) as detailed below and determined that it was acceptable in accordance with section 60 of the *Legal Profession Act*.

4. The jurisdiction of the Hearing Committee in the matter of the conduct of Mr. Byron was then established with the admission by consent of Exhibits 1 through 3 in the matter of the conduct of Mr. Byron. Exhibits 1 through 3 consisted of: 1) a letter dated June 17, 2013, signed by the Chair of the Conduct Committee revoking the appointment of the Hearing Committee scheduled to hold a hearing into the citations against Mr. Byron commencing on November 4, 2013 (Exhibit 1); 2) a letter of the same date signed by the Chair of the Conduct Committee appointing this Hearing Committee to deal with the conduct of Mr. Byron (Exhibit 2); and, 3) a letter dated June 17, 2013 signed by the Deputy Executive Director of the LSA confirming that he had exercised his discretion and determined that no one was to be served with a Private Hearing Application Notice (Exhibit 3). Counsel confirmed that Mr. Byron was a member of the LSA and therefore subject to its authority.

5. The Hearing Committee was advised that no party intended to apply to have the hearing held in private. As a consequence, the hearing involving the conduct of both Ms. and Mr. Byron proceeded in public.

6. The hearing arose from the same three citations faced by both Ms. and Mr. Byron who, at all material times, practiced law together at the law firm Byron and Company in Fort McMurray as set out below.

B. Agreed Statements of Facts and Admissions of Conduct Deserving of Sanction

1. Ludmila Byron

7. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction (Exhibit 50) tendered on behalf of Ms. Byron stated as follows (references to Tab numbers have been changed to reference the corresponding Exhibit numbers):

Facts and Admission Of Conduct Deserving Of Sanction On Citations #1 And #2

8. Ludmila Byron is a member of the Law Society of Alberta, having been admitted on June 19, 2001. Ludmila Byron was a member at all times relevant to this proceeding.

9. Ludmila Byron faces 3 citations, as follows:

1. It is alleged that you misappropriated trust funds, and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to follow the trust accounting rules of the Law Society, and that such conduct is conduct deserving of sanction.
3. It is alleged that you deceived the Law Society, and that such conduct is conduct deserving of sanction

10. A number of quotations from Ludmila and Timothy Byron are included in this Agreed Statement of Facts. The Law Society does not agree to or accept all of the contents of the statements made by either Ludmila Byron or Timothy Byron, but does agree that those statements are the statements made, or the contents of letters sent by them to the Law Society. These statements are admitted by consent not as to the truth of the statements made, but rather as to the fact that they were made by either Ludmila Byron or Timothy Byron.

11. The facts as set out in this Agreed Statement of Facts have been listed under headings which refer to the various citations, however in a number of cases the particular facts relate to more than one citation. The parties agree that the Hearing Committee may consider all of the facts in their entirety for each of the citations.

12. Ludmila Byron is a partner in the Fort McMurray law firm of Byron & Company. The other partner is her husband, Timothy Byron.

Citation #2

13. Ludmila Byron admitted guilt with respect to Citation #2 (failing to follow the accounting rules of the Law Society) at the opening of the Hearing on this matter on March 20, 2013.

14. Further information with respect to that Citation is set out below.

Audit History

15. A Rule 130 Audit (a spot audit) of Byron & Company was commenced on June 15, 2009.

16. The audit was conducted by Francine Leroux. Ms. Leroux attended at the Byron and Company premises on June 15, 16, 18 and 19, 2009. Byron and Company fully cooperated with the auditor, Francine Leroux throughout the audit process.

17. Ms. Leroux responded to 12 specific questions asked of her by the Law Society Investigator, a copy of the questions and responses is included under Exhibit 27. The Audit

Report issued by Glen Arnston (which was based on the field work of Francine Leroux) and which is dated Oct. 29, 2010 is attached at Exhibit 44.

18. At the commencement of the audit the trust bank reconciliations had not been reconciled since January 2008. In accordance with the standard Law Society policy, Ms. Leroux requested that Ludmila Byron sign an undertaking to freeze the trust account until the reconciliations were brought up to date¹ and any shortages were corrected. A copy of the undertaking is included under Exhibit 24.

19. On June 18, 2009 Ludmila Byron advised the auditor that the reconciliations were current, but that there was a trust account shortage of \$47,562.53.

20. On June 18, 2009, during the course of the spot audit, a debit memo transfer which had been made on December 24, 2008 in the amount of \$7,500 from the Bank A bank account to the general account was noted. Ludmila Byron had no explanation for the transfer and faxed a request the same day to RBC seeking an explanation.

21. On June 24, 2009 the law firm provided a current trust bank account reconciliation that did not show any shortage (Exhibit 35). The firm had borrowed funds and deposited the sum of \$47,562.53 into the trust account to cover the shortage.

22. On June 25, 2009 the Undertaking was lifted (Exhibit 29) permitting the firm to operate the trust account, and it has continued to operate the trust account without further interruption, subject to a monthly reporting requirement to the Law Society as to their compliance.

23. On September 3, 2009, Ms. Leroux, while awaiting some explanation via the Byrons from Bank A, asked Byron & Company to deposit \$7,500 from general to trust until such time they had a response from the bank. Byron and Company complied with that request.

Factual Matters of Application to all 3 Citations

24. In September 2003, Ludmila Byron started practicing law in Fort McMurray. In 2004, Timothy Byron became a partner and the firm was renamed Mydliar Byron.

25. Effective January 19, 2005 Mila Mydliar Professional Corporation increased its previous line of credit with Bank A from \$10,000 to \$20,000 (Exhibit 7).

¹ The Law Society separately and specifically permitted certain cheques to be drawn upon the trust bank account to enable real estate transactions in progress to be closed which was done during the currency of the Undertaking.

26. On August 26, 2006, following the marriage of Timothy Byron and Ludmila Byron, the firm became Byron and Company.

27. *[Redaction made pursuant to direction of Hearing Committee]*

28. *[Redaction made pursuant to direction of Hearing Committee]*

29. *[Redaction made pursuant to direction of Hearing Committee]*

Citation #2 — Failing to follow accounting rules

30. A summary of the accounting issues which were found by the auditors is contained in the Summary of Reportable Exceptions, found at Exhibit 27. It indicated that the accounting issues included the following:

1. Late Forms S - 07 and 08
2. Late Forms T - 06, 07 and 08
3. Books and records were not current
4. Bank reconciliations not signed/dated or within 30 days
5. Bank errors not corrected promptly
6. Trust Shortage
7. Late GST filing
8. Not printing monthly reports
9. Method of receipt not on trust and general journals
10. Duplicate receipt book missing
11. Other "charges" not separated from disbursements on statements of account
12. Inactive balances, negative retainers.

31. During Ludmila Byron's interview by Law Society investigators Oct. 13, 2009 she stated that the trust shortage of approximately \$55,000 was not identified because the trust account reconciliations were not being done. The following exchange took place:

Mr. Olesky: So do you acknowledge that both the \$47,000 trust shortage and the \$7,500 trust shortage were not detected on a timely basis because you did not prepare your trust reconciliations on a timely basis?

Ms. Byron: Yes, I acknowledge that. If I may add, though, we are - - have changed that, and we are on top of our trust reconciliations.

32. Ludmila Byron advised the investigators that the reconciliations had been allowed to get behind in part because she had difficulty hiring qualified accounting staff, and intended to do the reconciliations herself. (Ludmila Byron's transcript page 261).

33. Ludmila Byron discussed the bookkeeping problem with the other partner in the firm - Timothy Byron, and advised Timothy Byron that the trust reconciliations were behind (Ludmila Byron's transcript, page 260). They discussed hiring a bookkeeper (Ludmila Byron's transcript, page 261).

34. They did not self-report to the Law Society. Ludmila Byron said she was unaware of any obligation to do that. (Ludmila Byron's transcript, page 262)

35. Ludmila Byron acknowledged the following (Ludmila Byron's transcript, page 271)

1. that she failed to prepare monthly trust reconciliations on a timely basis,
2. that at one point in time the firm was about 1½ years behind on the trust reconciliations,
3. that she knew that the Law Society's rules required trust reconciliations to be completed monthly,
4. that she did not report her failure to prepare monthly trust reconciliations to the Law Society,
5. that she did not advise the Law Society that the firm was behind on the trust reconciliations until a spot audit was conducted in June of 2009,
6. that a deposit of \$47,562.53 of trust funds was made into the general account on or about April 30, 2008 using a deposit slip which Ludmila Byron filled in,
7. that the trust shortage was not identified until June, 2009, when the audit was conducted,
8. that the trust shortage of \$47,562.53 was not rectified until June 23, 2009,
9. that \$7,500 was transferred from the firm's trust account to the general account on December 24, 2008,
10. that the \$7,500 trust shortage was not rectified until September, 2009.

36. On May 13, 2010 Ludmila Byron wrote to Maurice Dumont, QC, Manager, Complaints of the Law Society of Alberta (Exhibit 39) with respect to the investigation into her conduct.

37. With respect to her failure to follow the accounting rules, she stated the following:

I have openly and candidly admitted to my failure to comply with the Law Society accounting rules. Please know that my failure to comply with the Law Society accounting rules did not result from any disrespect or disregard for the rules; rather, my failure to comply with the Law Society accounting rules resulted from a lack of knowledge of how to operate the PC law accounting program coupled with our inability to secure a bookkeeper to replace the experienced one that left our office.

38. When the auditor commenced the audit on June 15, 2009, she found that the firm's Form S had been filed late, and that the 2006, 2007 and 2008 Form T's (which required an accountant's involvement) had not been filed. Bank reconciliations of the trust accounts had not been completed since January, 2008.

39. The auditor further learned that loan agreements had been entered into with a client without advising the client of the advantage of independent legal advice.

Citation #1— Misappropriation of trust funds

40. Citation #1 relates to certain shortages in the firm's trust account, as follows. Each of these will be dealt with in turn below; however it should be noted that the admission of conduct deserving of sanction is made with respect to the transfer of \$7,500 on December 24, 2008. The facts relating to all three situations are included in this Statement of Facts as they relate to the overall investigation and the firm's financial records. The shortages identified in relation to Citation #1 were as follows:

1. April 30, 2008 - \$47,562.53, which was trust money, was deposited into Byron and Company's general account rather than the firm trust account;
2. December 24, 2008 - \$7,500 was transferred from trust to general by a debit memo - the circumstances of that are set out below, and
3. December 30, 2008 - a \$2,000 cheque was written on the trust account and deposited into the general account.

A. April 30, 2008 Shortage

41. Trust funds from two clients totaling \$47,562.43 were incorrectly deposited on April 30, 2008 into Byron and Company's general bank account instead of the trust bank account. A copy of the deposit slip is at Exhibit 3. The deposit slip was in Ludmila Byron's handwriting.
42. The two cheques involved were for \$45,648.17 and \$1,914.36. The two cheques were deposited on one deposit slip. Another deposit was made to the same general account on the same day and at the same time. That deposit included three cheques which total \$1,623.65.
43. A copy of the bank statement for the relevant month is also at Exhibit 12.
44. *[Redaction made pursuant to direction of Hearing Committee]*
45. The trust shortage was not identified until the spot audit as the firm was not reconciling the bank trust account statements to the PC Law records. The funds were replaced in trust shortly thereafter (Exhibits 25 and 28).
46. The following statement was made by Ludmila Byron in her letter of August 18, 2009 (Exhibit 31):

Through inadvertence, I completed the wrong deposit slip on April 30, 2008. As I mentioned to you over the telephone, I have no independent recollection of doing this and only know that I must have done this because it is my handwriting and my initials that are recorded on the deposit slip that caused the error. I do not know if the cheque was placed on top of the wrong deposit book and I simply completed the deposit slip as an automation or if I actually took the cheque from the file and simply used the wrong deposit book to record the deposit. I suspect that it's the former rather than the latter as we usually place the cheques on top of the deposit books once they are posted into the PC Law accounting software and the cheque was properly posted on August 28, 2008. What I do know is that either way, I used the wrong deposit slip causing the error. What I also know is that I did this inadvertently and never consciously nor intentionally did I complete the wrong deposit slip.

...

We did not notice the error in the general account as those reconciliations were not completed and as monitoring of the account was at a minimal.

...

47. Ludmila Byron was interviewed by Brian Olesky and Lawrence Taylor of the Law Society of Alberta on October 13, 2009. At that time, she acknowledged the following:

1. The firm had cash flow issues in 2007 and 2008 (Ludmila Byron's transcript, pages 9 and 10); that the bank would regularly phone the firm to advise there was an overdraft and that funds needed to be deposited (Ludmila Byron's transcript, page 10 and 11).
2. Their account manager (T.V.) for the first part of that time period, would advise them that they had until 3:00 p.m. to deposit funds, and that with T.V.'s replacement (S.S.) they had until 12:00 noon to make a deposit when the account was in overdraft (Ludmila Byron's transcript, page 17).
3. There were frequent occasions when Ludmila Byron asked the bank not to "NSF any cheques" (Ludmila Byron's transcript, page 21 and 22).
4. Bank reconciliations of the general account had not been done from July, 2006 to the time of the spot audit in 2009. A key staff person (D.S.) left the office in 2006 and the persons hired to replace her never caught up with the reconciliations. The general account bank reconciliations were behind by approximately two and half years at the time of the audit (Ludmila Byrons transcript pages 97-99).
5. At the time of the audit, the most recent trust reconciliation in which Ludmila Byron had complete confidence, was the July, 2006 trust reconciliation done by D.S. Subsequent reconciliations had been done, but had apparently contained errors and were not considered by Ludmila Byron to be reliable (Ludmila Byron's Transcript, page 114).

B. December 24, 2008 shortage

48. A transfer of \$7,500 was made from the firm's trust account to the general account on December 24, 2008 by way of debit memo.

49. The transfer was made by S.S., who was the firm's account manager at Bank A.

50. When Ludmila Byron was interviewed on October 13, 2009, she said she was on holidays in Edmonton on that day. She denied having spoken with S.S. on December 24 (Ludmila Byron's transcript, page 226, line 3) and she denied having authorized the transfer (Ludmila Byron's transcript, page 22, line 18 and following).

51. There was no written confirmation of any instructions from Ludmila Byron to S.S.

52. Ludmila Byron's cell phone records indicate that a call was placed from S.S.'s number at Bank A to Ludmila Byron's cell at 9:22 a.m. on December 24, 2008, (Exhibit 17). A note on Bank A's computer system was made by S.S. at 9:25 a.m. on December 24, 2008. The file memo

states "ce cell" transfer \$7,500 from trust acct to CA account as per client request to cover O/D Spoke to Mila (Exhibit 16).

53. Ludmila Byron's cell phone records indicate the cell phone account was charged for a call lasting up to two minutes (Exhibit 17).

54. The bank records also indicate that the general account was in an overdraft position of \$4,412.47 on December 24, 2008, after \$2,000 had been advanced on the firm's Bank A's operating line of credit on December 23 (Exhibits 20 and 22).

55. Timothy Byron reported to the Law Society on September 21, 2009 about the steps which had been taken to try to identify the basis for the transfer from the trust account and to eliminate the shortfall (Exhibit 33). As of September 16, 2009, the firm had deposited the \$7,500 back into the Bank A trust bank account (Exhibit 32).

C. December 30, 2008 Transfer

56. On December 30, 2008, a cheque for \$2,000 was written on Byron & Company's trust account, and deposited in the general account. Prior to the deposit the general account was overdrawn by \$1,133.31 (Exhibit 23).

57. Bank A's computer records of telephone conversations show that Mr. Singh made a file notation on the computer at approximately 10:06 a.m. His file note states "ce call. Acct. O/D Client deposited funds in Edmonton and now the acct is covered." (Exhibit 19).

58. Ludmila Byron's cell phone records confirm that 3 calls were made from the cell to S.S.'s number at RBC in Fort McMurray on December 30, 2008. The calls commenced at 9:51a.m., 9:52a.m. and 10:00a.m., and were for up to 1 minute, 4 minutes and 1 minute respectively. (Exhibit 18).

59. The \$2,000 cheque was deposited to general by way of a branch to branch deposit as is shown at Exhibit 20. A copy of the trust cheque is at Exhibit 23.

60. The cheque was handwritten. The handwriting on the body of the cheque is Ludmila Byron's, but the cheque was signed by Timothy Byron; the endorsement on the back of the cheque is also Timothy Byron's.

61. When Ludmila Byron was interviewed by the Law Society investigators on October 13, she was asked if she could remember any other conversations with the bank over the Christmas holidays (Ludmila Byron's transcript, page 233, line 25 and page 234, line 1). The following questions were asked and answered:

Mr. Olesky: Okay. So do you recall any conversations with the bank over that time frame when you were closed for Christmas?

Ms. Byron: No.

Mr. Olesky: And how adamant are you about that? How certain are you?

Ms. Byron: As certain as I can be.

62. Ludmila Byron subsequently spoke with the investigator (Lawrence Taylor) on November 25, 2009 by telephone with respect to the December 30 branch to branch transfer. Ludmila Byron advised Mr. Taylor on November 25, 2009 that she remembered S.S. calling her on December 30, 2008 while she was in Edmonton and that the \$2,000 was taken from a line of credit secured on their home and was deposited to the general bank account from Bank A's branch in Edmonton.

63. Ludmila Byron wrote to Maurice Dumont, QC on August 10, 2010 with respect to this transfer. In that letter she acknowledged that she and S.S. had spoken on December 30th. In her letter she said "my husband and I attended immediately at a local Bank A branch in Edmonton and deposited into that account \$2,000 from our personal funds to cover the shortfall". (Exhibit 40)

64. In fact, the only \$2,000 deposit to the firm's general account on December 30, 2008 was by way of the trust cheque signed by Timothy Byron and completed by Ludmila Byron.

65. The trust cheque was not posted to a client trust ledger in December 30, 2008 at the time it was written.

66. During the June 2009 audit, the \$2,000 trust cheque was recorded in PC Law for the first time, and was posted to an account labelled "Accounting Suspense", account #1474. A printout of the Accounting Suspense ledger card and the corresponding audit trail for the trust bank journals are at Exhibit 26.

67. On August 12, 2009, the firm deposited funds in the amount of \$2,800 to replace the \$2,000 which had been transferred on December 30, together with disbursements for \$810. The deposit of \$2,810 shows on the Accounting Suspense ledger as transaction # 101043.

68. *[Redaction made pursuant to direction of Hearing Committee]*

69. *[Redaction made pursuant to direction of Hearing Committee]*

70. *[Redaction made pursuant to direction of Hearing Committee]*

71. *[Redaction made pursuant to direction of Hearing Committee]*

72. On October 13, 2009, Ludmila Byron denied having spoken to S.S. at any time during the December, 2008 Christmas break (Ludmila Byron's transcript page 234, line 1).

73. Cell phone records indicate that a call was connected on December 24th between Ludmila Byron's cell phone and S.S.'S Bank A's direct line.

74. On December 30, 2008 — 3 phone calls took place between Ludmila Byron's cell and Mr. S.S.'s direct line following which the \$2,000 trust cheque was written and deposited to general by branch to branch deposit at a Bank A branch in Edmonton.

75. Timothy and Ludmila Byron were on holidays in Edmonton on December 30, 2008 staying with her family.

76. Ludmila Byron advised Lawrence Taylor (on November 25, 2009) that the \$2,000 deposit to the firm's general account had been drawn from personal funds.

77. As noted above, a cheque was written from the trust account to the general account for \$2,000 and deposited into an Edmonton Bank A branch on that date. The cheque was handwritten not typed, (most trust cheques were typed) and the cheque itself was signed by Timothy Byron. The cheque is located at the Exhibit 23. The handwriting on the body of the cheque is that of Ludmila Byron.

78. On August 10, 2010 Ludmila Byron wrote to Maurice Dumont, QC, Manager, Complaints of the Law Society of Alberta. In that letter, Ludmila Byron referred to both the \$7,500 transfer on December 24, and the \$2,000 cheque from trust to general of December 30 and she made the following statement:

"I absolutely deny having spoken to S.S. by telephone or in any other fashion on December 24, 2008 let alone authorizing him to make a transfer of funds from our trust account into our general account."

"...first, S.S. and I did speak on December 30, 2008 when he telephoned to advise that our general account was "overdrawn". My husband and I attended immediately at a local Bank A branch in Edmonton and deposited into that account \$2,000.00 from our personal funds to cover the shortfall".

79. The statement that the \$2,000 was from their personal funds was not accurate, as the funds came from the firm trust account.

80. Ludmila Byron states that the personal funds about which she was thinking when she spoke to Mr. Taylor and wrote to Mr. Dumont, were funds drawn upon the Bank B line of credit in the amount of \$5,000 and deposited to the firm general bank account on January 6, 2009 (Exhibit 49). Ludmila Byron was plainly mistaken when she identified the \$2,000 deposit to the trust bank account on December 30, 2008 as coming from personal funds and has acknowledged that before any of the citations issued (Exhibit 49).

Citation #3 — Deceiving the Law Society

81. The third citation which was directed to hearing is one of deceiving the Law Society. As noted above Ludmila Byron was inaccurate in some of the statements she made to the Law Society investigator and to the complaints manager, but the conduct which forms the basis for the deceit citation is captured within the facts which are admitted as part of the admissions of guilt on Citations 1 and 2.

82. The Law Society has agreed not to call further or separate evidence on Citation #3, and will ask the Hearing Committee to dismiss Citation #3.

Requests for matters to be redacted in the Final Written Decision

83. The Byrons request and the Law Society consents that in the event the Hearing Committee decides in its final written report covering its disposition of the citations to reference any of the facts contained in paragraphs 20, 21 and 22 of the Agreed Statement of Facts that they should be redacted from the version of the report made available for publication any of the facts stated in said paragraphs 20, 21 and 22 including the name of D.M. or D. Ltd.

84. Likewise, the Byrons request and the Law Society consents that in the event the Hearing Committee decides in its final written report covering its disposition of the citations to reference

any of the facts contained in paragraphs 37, 61, 62, 63 and 64 of the Agreed Statement of Facts to redact the names of D.B., the client by the name of B. and the clients by the name of G. and M.

85. All of these facts are agreed to and admitted.

86. Ludmila Byron agreed that the facts as set out above constitute conduct deserving of sanction with respect to Citations #1 and #2.

2. Timothy Byron

87. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction (Exhibit 4) tendered on behalf of Mr. Byron stated as follows:

Facts and Admission Of Conduct Deserving Of Sanction On An Amended Citation

88. Timothy Byron is a member of the Law Society of Alberta, having been admitted on November 28, 2003. Timothy Byron was a member at all times relevant to this proceeding.

89. Timothy Byron faces 3 citations, as follows:

1. It is alleged that you misappropriated trust funds, and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to follow the trust accounting rules of the Law Society, and that such conduct is conduct deserving of sanction.
3. It is alleged that you deceived the Law Society, and that such conduct is conduct deserving of sanction

90. Timothy Byron has read the Agreed Statement of Facts which has been prepared with respect to the Citations directed against Ludmila Byron, a copy of which is attached.

91. Timothy Byron acknowledges that the facts set out in the Agreed Statement of Facts that are relevant to him are true and correct.

92. Timothy Byron is aware that there is a proposal to consolidate Citations #1 and #2 above, as follows:

It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that as a result of that failure, trust funds in an amount which exceeded \$47,500 were deposited into

the general account and held there for more than one year, and that such conduct is conduct deserving of sanction.

Citation #3 — Deceiving the Law Society

93. The third citation which was directed to hearing is one of deceiving the Law Society. Ludmila and Timothy Byron were inaccurate in some of the statements they made to the Law Society investigator and to the complaints manager, but the conduct which forms the basis for the deceit citation is captured within the facts which are admitted as part of the admissions of guilt on the consolidated Citations.

94. The Law Society has agreed not to call further or separate evidence on Citation #3, and will ask the Hearing Committee to dismiss Citation #3.

Requests for matters to be redacted in the Final Written Decision

95. The Byrons request and the Law Society consents that in the event the Hearing Committee decides in its final written report covering its disposition of the citations to reference any of the facts contained in paragraphs 20, 21 and 22 of the Agreed Statement of Facts that they should be redacted from the version of the report made available for publication any of the facts stated in said paragraphs 20, 21 and 22 including the name of D. Ltd.

96. Likewise, the Byrons request and the Law Society consents that in the event the Hearing Committee decides in its final written report covering its disposition of the citations to reference any of the facts contained in paragraphs 37, 61, 62, 63 and 64 of the Agreed Statement of Facts to redact the names of D.B., the client by the name of B. and the clients by the name of G. and M.

97. All of the facts above and all of the facts in the attached Agreed Statement of Facts regarding Ludmila Byron are agreed to and admitted.

98. Timothy Byron agrees that the facts as set out above constitute conduct deserving of sanction with respect to the consolidated Citation set out above.

C. Decision Re: Agreed Statements of Facts and Admissions of Conduct Deserving of Sanction

99. No additional evidence was led by either party. The Hearing Committee concluded that the Agreed Statements of Facts and Admissions of Conduct Deserving of Sanction were acceptable to it in accordance with section 60 of the *Legal Profession Act*.

100. In reaching its conclusion, the Hearing Committee recognized that for both Ms. and Mr. Byron, the Agreed Statements of Facts and Admissions of Conduct Deserving of Sanction contemplated the dismissal of the serious charges of misconduct cited against them in Citation # 3. However, as aptly put by the Hearing Committee in the *Law Society of Alberta v. Nancy Pearson* (2011):

In assessing a proposal that dismisses charges without a full hearing of the evidence, the Hearing Committee must be cognizant of the regulatory landscape. The citations were directed by the Conduct Committee. A panel of that committee, applying the threshold test similar to that used by the Crown in deciding whether to proceed with criminal charges, must have concluded that there was a reasonable prospect of a hearing committee finding conduct deserving of sanction arising from misappropriation of funds. The Conduct Committee sits in panels of at least 3 lawyers and lay Benchers to determine whether citations should be directed. In light of this structure, the hearing Committee must be satisfied that the termination of further proceedings on citations...probably would not compromise the public interest or weaken the confidence with the profession and the public have in the Law Society's conduct processes. That confidence is partly dependent on assuring impartiality, independence, transparency, fairness and efficiency.

*In making this judgment, it is very important to recognize that the Law Society and its counsel are in a far better position than a hearing committee to judge the prospects of proving various degrees of misconduct. Moreover, a joint submission on penalty "promotes resolution, the saving of time and expense, and reasonable certainty for the parties." *Law Society of Upper Canada v. Cooper*, [2009] L.S.D.D. 81 (Appeal Panel), at 18. These desirable goals should be encouraged both in admissions of guilt and joint submissions on penalty.*

*It follows that deference should be given to the judgment of the Law Society and its counsel in supporting an admission of guilt which will result in some citations being dismissed, and that the same principles applicable to a joint submission on penalty should be applied. A hearing committee should give serious consideration to a jointly tendered admission resulting in termination of some citations, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. See *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, R. L.R.T., 2010 ABCA 224.*

101. Counsel also provided the Hearing Committee with the Alberta Court of Appeal decision in *R. v. Bullock*, 2013 ABCA 44 which further supports the proposition that a hearing committee must give serious consideration to jointly tendered admissions even where they result in the termination of some citations.

102. The Hearing Committee had the benefit of review of the agreed exhibits and able submissions from counsel for both sides. Nothing caused the Hearing Committee concern that the public interest would be compromised or that the admissions in these cases were unreasonable based on the available evidence. The Hearing Committee concluded there were not good or cogent reasons for rejecting the admissions made.

103. Ms. and Mr. Byron were both present with their counsel, Mr. Warner, Q.C., and acknowledged to the Hearing Committee that they:

1. made the admissions voluntarily;
2. unequivocally admitted their guilt to the essential elements of the admitted citations;
3. understood the nature and consequences of the admissions; and
4. understood that the Hearing Committee was not bound by any submissions made jointly by their counsel and counsel for the LSA regarding sanction.

D. Joint submission on sanction

104. Having found that the agreed Statements of Facts and Admissions of Conduct Deserving of Sanction were in acceptable form and that, pursuant to section 60(4) of the *Legal Profession Act*, the conduct of Ms. and Mr. Byron as described in Citations 1 and 2, which were consolidated in Mr. Byron's case, was therefore conduct deserving of sanction, the Hearing Committee invited counsel to address sanction.

105. The Committee was then advised that counsel for the LSA and counsel for the Byrons had prepared a joint submission and the following exhibits were entered by consent:

1. Letter dated March 1, 2013, from the Deputy Executive Director certifying that Ms. Byron has no discipline record (Exhibit 51 in the matter of the conduct of Ms. Byron);

2. Letter dated June 17, 2013, from the Deputy Executive Director certifying that Mr. Byron has no discipline record (Exhibit 5 in the matter of the conduct of Mr. Byron).
106. The joint submission on sanction proposed was as follows:
1. Ludmila Byron shall be suspended for 7 months commencing June 29, 2013;
 2. Timothy Byron shall be suspended for two months commencing March 3, 2014;
 3. The Byrons acknowledged that Ms. Byron would have to apply for re-instatement and that there was no guarantee she would be re-instated before Mr. Byron's share of the 9 month consecutive suspension began. If this occurs, the Byrons must make arrangements for a lawyer who has been approved by the LSA to operate a trust account to look after their practice or a Custodian will be appointed;
 4. The Byrons shall pay the costs incurred by the LSA in these matters totaling \$35,000;
 5. Random spot audits will be conducted by and in the sole discretion of the LSA for 10 years, the actual costs of which shall be paid by the Byrons. The estimated cost of \$3,000/year shall be paid to the LSA in advance on or before January 15 of each year, provided that in any year after 2014, if an audit does not occur for any reason, then the payment in advance for the following year need not be paid. In the event the actual spot audit costs are less than \$3,000, then such excess shall be reimbursed to Byron & Co. forthwith. Likewise if the costs of any spot audit exceed \$3,000, the Byrons shall pay the additional amount forthwith after being invoiced and subject to resolution of any dispute over the amount of the excess
 6. The Byrons shall provide a monthly data download to the LSA, until otherwise directed;
 7. The Byrons shall also submit to the LSA on a monthly basis photocopies of the firm's trust bank account statements with copies of all cleared cheques attached, until otherwise directed; and finally,
 8. The Byrons be directed to Practice Review and comply with any recommendations made by Practice Review, and in particular they shall be required to

report to Practice Review quarterly for 10 years as to their staffing levels and arrangements, including their accounting staff levels.

107. The Hearing Committee heard submissions from counsel for the LSA and from counsel for Ms. Byron and Mr. Byron and made its decision respecting sanction as follows.

E. Decision Re: Joint Submission on Sanction

108. In determining an appropriate sanction, the Hearing Committee is required to take a purposeful approach. The overarching objectives of the sanctioning process are to protect the public and to preserve high professional standards and public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLS 10.

109. In *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1): the author states:

The purpose 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.

110. A joint submission on sanction should receive deference because it is in the public interest so that we encourage members of the Law Society to accept responsibility for their actions, and to cooperate with the LSA to ensure that the standards expected of them will be met on a go forward basis. It is also in the public interest that we save the considerable time, effort and expense associated with contested hearings.

111. As with agreements of fact and admissions of conduct deserving of sanction, a Hearing Committee must also give serious consideration to a joint submission on sanction. A joint submission should not be disregarded unless it is unfit, unreasonable or there are good and cogent reasons for rejecting it. If the joint submission on sanction is consistent with the public interest, it must be accepted. *Law Society of Alberta v. Merchant*, 2012 ABLS 7 (CanLII); *Law Society of Alberta v. Valiant*, 2012 ABLS 10 (CanLII); *R. v. Tkachuk*, 2001 ABCA 243, and *Law Society of Alberta v. Pearson*, 20011 ABLS 17

112. As was stated by the Alberta Court of Appeal in *R v. LRT*, 210 ABCA 224, at para. 11:

Joint Submissions are an integral part of our criminal justice system and should not be lightly disregarded by the sentencing

court, or by the appellate court. On a number of occasions, this court has considered sentencing judge's obligations and the appellate court's role in dealing with cases involving joint submissions. Both the sentencing and appellate court must ensure that the agreed upon sentence falls within the appropriate range: *R. v. C. (G.W.)*, 2000 ABCA 333 (CanLII), 2000 ABCA 333, 277 A.R. 20. While the sentencing court should generally accept the joint submission unless it results in an unfit or unreasonable sentence, courts do not abdicate their responsibility for sentencing and the decision to accept a joint submission requires a careful review of the circumstances underlying the joint submission, and the appropriateness of the sentence to the individual case: *R. v. Koch*, 2001 ABCA 227 (CanLII), 2001 ABCA 227; 286 A.R. 303. In YCJA cases, the court must also ensure that mandatory statutory requirements, objectives, and sentencing factors have been taken into account.

113. In deciding whether to accept the joint submission in these cases, the Hearing Committee took a purposeful approach and considered the factors outlined in paragraphs 69 and 70 of the Hearing Guide. More specifically, in deciding how the public interest was to be protected through the sanctioning process, the Hearing Committee took into account the following factors: a) the nature and gravity of the misconduct; b) whether the misconduct was deliberate; c) whether the misconduct raised concerns about honesty or integrity; d) the impact of the misconduct on third parties; e) the general deterrence of other members of the profession; f) specific deterrence for Ms. and Mr. Byron; g) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members; h) denunciation of the misconduct; and, i) consistency with penalties imposed in similar cases. In addition, the Hearing Committee considered mitigating circumstances that appropriately temper the sanctions that may otherwise be imposed, including the lawyers' conduct since the misconduct, the lawyers' prior disciplinary records, the lack of experience of the lawyers and the admissions of guilt demonstrating an acceptance of responsibility. *Law Society of Alberta v. Elgert*, 2012 ABLS 9.

114. The Hearing Committee was aided in its analysis by the thorough submissions of the counsel for Ms. and Mr. Byron and for the LSA.

115. The citations in these cases relate to trust accounting and the handling of trust funds. They are very serious. Both Ms. and Mr. Byron admit to what can only be described as an utter failure to comply with the LSA accounting rules and to improper deposits or transfers of trust funds. The problems began with the loss of the firm bookkeeper and an inability to find a

replacement. Ms. Byron took on responsibility for the accounting function, but did not have sufficient experience to understand what she was doing. Predictably, the accounts fell into a state of disarray which led to erroneous deposits and transfers of trust funds into the general account going unnoticed until a spot audit by the LSA in June, 2009 revealed the problems. Compounding the already disastrous situation was a failure on the part of Ms. and Mr. Byron to understand their obligation to report their difficulties to the LSA before the spot audit occurred.

116. Although Ms. Byron made an admission to Citation #1 - Misappropriation of trust funds, in connection with the transfer of \$7,500 from trust to the firm general account on December 24, 2008 (which would normally result in disbarment), counsel for Ms. Byron and for the LSA agreed that the facts admitted were intended to reflect the evidentiary challenge the LSA faced in proving any conscious or deliberate intention to steal. To Ms. Byron's credit, she nonetheless made the admission to reflect the fact the transfer was made in circumstances where the firm had no entitlement to the money.

117. Mitigating against the very serious circumstances underlying all of the admitted citations, is the fact that neither Ms. Byron or Mr. Byron had any prior discipline record with the LSA. They cooperated with the auditors during the LSA audit process and once the trust fund shortages were identified, they replaced those funds and they did so quickly. There have been no client complaints or losses. They worked closely and cooperatively with the LSA to get their accounts in order and they have continued to cooperate with the LSA and undertake the necessary education which has resulted in them being in compliance with the LSA rules for the past four years. Importantly, both Ms. and Mr. Byron have taken responsibility for their roles in the circumstances leading to the citations and both expressed great remorse.

118. All of the above is inconsistent with any assertion that Ms. or Mr. Byron deceived the LSA. While there were some inaccuracies in the information provided, it is not surprising given the state of the firm accounting records. The LSA, quite reasonably in the view of the Hearing Committee, therefore asked that Citation #3 be dismissed against both Ms. and Mr. Byron.

119. It was also noted by counsel that the Byrons provide a service to the public in the Fort McMurray area that is important to that community.

120. The proposed sanction attempts to balance the objectives of clearly denouncing the serious misconduct of Ms. and Mr. Byron, deterring future misconduct by them and by members

of the LSA generally, and maintaining public confidence in the legal profession. Consistent with the latter is also the objective to ensure successful rehabilitation where possible.

121. The sanction proposed in this case is, appropriately, severe. Indeed, it is as severe a sanction as can be rendered short of disbarment. The suspension proposed is significant, the financial consequences in terms of costs payable by the Byrons are harsh, and their ongoing obligations to work with the LSA for the next decade are onerous and will ensure competence and protect the public.

122. For all of these reasons, the Hearing Committee was satisfied that the joint submission on sanction was reasonable and should be accepted.

F. Concluding Matters

123. In the event of any request for public access to the evidence in these proceedings, the exhibits and transcripts may be made available. However, the exhibits and transcript of proceedings shall be redacted to protect the identity of clients and to protect any information which may otherwise be subject to a claim of privilege.

124. No referral to the Attorney General is directed.

Dated at Edmonton, Alberta, February 25, 2014

Anne L. Kirker, Q.C.

Kathleen Ryan, Q.C.

Wayne Jacques, C.A.

Corrigendum of the Hearing Committee Report

The word “hereof” in paragraph 83 of the Report was substituted with the phrase “of the Agreed Statement of Facts”, and the phrase “of the Agreed Statement of Facts” was added after the number “64” in paragraph 84 of the Report.

The word “hereof” in paragraph 95 of the Report was substituted with the phrase “of the Agreed Statement of Facts”, and the phrase “of the Agreed Statement of Facts” was added after the number “64” in paragraph 96 of the Report.