IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
AJAY JUNEJA, A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

REGARDING SANCTION

INTRODUCTION

[1] On June 13, 2013 the hearing committee convened in Edmonton to hear submissions regarding sanction. Subsequently, on June 19, 2013, the Hearing Committee reconvened by video and telephone conference. Present in the LSA conference room in Edmonton was Law Society counsel, Ms. Tamara Friesen, Law Society counsel's assistant, counsel for the Member, Simon Renouf, Q.C., the Member and one member of the hearing committee, Rose Carter, Q.C. One further member of the Hearing Committee, Derek Van Tassell, Q.C. attended by telephone and the Chair, Anthony G. Young, Q.C. attended by video conference.

PRELIMINARY MATTERS

[2] At the outset of the sanctioning phase of this hearing the following exhibits were admitted:

Exhibit 108 Disciplinary Record of the Member;

Exhibit 109 Hearing Report of a previous LSA hearing of the Member dated December 21, 2011;

Exhibit 110 Portion of Transcript taken at the LSA on August 11, 2011;

Exhibit 111 Section 58 (5) Practice Review Report to the Conduct Committee dated May 10, 2010; and

Exhibit 112 Practice Snap Shot provided by the Member dated November 17, 2009.

ARGUMENT OF THE LAW SOCIETY

[3] The Law Society is seeking disbarment of the Member. The LSA's position is that disbarment is necessary to protect the public. Disbarment is called for to uphold the reputation of the profession. LSA counsel stated that the decision to disbar is something that must be taken seriously. Lawyers do not have a right to practice law. Lawyers have the privilege of practicing law. It is a license to practice law.

[4] In this regard LSA counsel stressed that licenses are earned. Lawyers have the obligation to abide by the rules and regulations as set out by the LSA. If it becomes impossible to regulate

the lawyer the lawyer's license to practice must be revoked. Counsel for the Law Society referred to *Adams v. The Law Society of Alberta* [2000] A.J. No 1031 (Alberta C.A.) the Court Stated at pages 2 and 3 of that decision:

> "[6] Before addressing the specific grounds of appeal, it may be helpful to consider the context of a professional disciplinary hearing. Professional bodies are those to whom the government has seen fit to grant monopoly status. With this monopolistic right comes certain responsibilities and obligations. Chief amongst them is self-regulation. Self-regulation is based on the legitimate expectation of both the government and public that those members of a profession who are found guilty of conduct deserving of sanction will be regulated – and disciplined – on an administrative law basis by the profession's statutorily prescribed regulatory bodies. Thus, a professional disciplinary hearing is not a criminal hearing; it is an administrative hearing. Admission or proof of the alleged professional misconduct (or incompetence) is not the same as a plea or finding of guilt in a criminal matter. Rather, it is a finding of conduct deserving of sanction or incompetent practice based on administrative principles, including applicable evidentiary rules. A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favorably and unfavorably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.
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> [7] In the context of the legal profession, a lawyer is required to complete stringent academic and professional studies as well as successful articles before being admitted to the bar. The character and integrity of applicants are relevant factors for admission to the profession. A member of the legal profession having successfully met all of the prerequisites of profession is accepted into the profession on the basis that he or she has full knowledge and understanding of the responsibilities, duties and obligations of that office.
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> [8] Although arising in a different context, the Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in *Hill v. Church of Scientology of Toronto* [1995] 2 S.C.R. 1130. At 1178, Cory J. said:
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> > "The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, lawyer cannot survive without a good reputation."
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> [9] Every member is or ought to be aware that not only one's professional conduct, but also one's personal conduct may be subject to scrutiny when that conduct may likely affect one's professional reputation, integrity and trustworthiness. This conduct may or

may not be criminal. Unlike criminal behavior per se, individual misconduct may have a significant effect on the reputation of the legal profession generally.

[10] Historians may question the origin and history of the oft-repeated statements about the honor and integrity of the legal profession, but it cannot be denied that the relationship of solicitor and client is founded on trust. That fundamental trust is precisely why persons can and do confidently bring their most intimate problems and all manner of matters great or small to their lawyers. That is an overarching trust that the profession and each member of the profession accepts. Indeed, it is the very foundation of profession and governs the relationships and services that are rendered. While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal profession will be eroded by disreputable conduct of an individual lawyer.

[11] It is therefore erroneous to suggest that in professional disciplinary matters, the range of sanctions may be compared to penal sentences and to suggest that only the most serious misconduct by the most serious offenders warrants disbarment. Indeed, that proposition has been rejected in criminal cases for the same reasons it should be rejected here. It will always be possible to find someone whose circumstances and conduct are more egregious than the case under consideration. Disbarment is but one disciplinary option available from a range of sanctions and as such, it is not reserved for only the very worst conduct engaged in by the very worst lawyers."

[5] It is the Law Society's position that the member has not done what he should do to keep his license. In support of this proposition, counsel for the Law Society referred to *Bolton v. The Law Society*, [1993] EWCA Civ 32 at paragraph 14:

"If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the Tribunal be likely to regard as appropriate any order less severe than one of suspension."

[6] Counsel relies upon paragraph 16 of Bolton in support of her position that the member must be disbarred. Paragraph 16 states:

"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce

> a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to reestablish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to reestablish his practice when the period of suspension is passed. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

[7] In further support of disbarment counsel for the LSA makes reference to section 49(1) of the *Legal Profession Act*:

> "For the purposes of this act, any conduct of the member, arising from incompetence or otherwise, that:
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> (a) is incompatible with the best interests of the public or of the members of the Society, or
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> (b) tends to harm the standing of the legal profession generally,
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> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta."

[8] Counsel for the LSA urged this Hearing Committee to consider three general categories regarding the conduct of the Member:

i) Competency;
ii) Integrity; and
iii) Governability

Competency

[9] It was pointed out that the Member has admitted breaching the rules. He has been breaching the Rules since 2006. In the result, clients' trust money has been put at risk. The LSA argues that it is no answer to say no one was harmed. The funds were at risk. Reference was made by the LSA to *R. v. Manolescu* [1997] A.J. No 797 at paragraph 11:

> "[11] The demand upon, and the standard expected of a lawyer in respect of his or her trust account is very high. The standard is virtually one of perfection. The Law Society of Alberta acknowledges that innocent human or machine error can occur, but it does not tolerate the results and insist on immediate rectification. Dishonesty in respect of trust accounts is not to occur. In practical terms, other people's monies are to be treated by lawyers as a sacred trust."

[10] Counsel for the LSA argues that the Member is not merely a bad bookkeeper. This is not a situation where the Member was simply too busy. It was necessary for the lawyer's regulator to shut down the Member's trust accounts and eventually his practice. The Member's trust accounts dipped so low that if called upon (at certain times) he would have been called upon to pay money from personal funds. The Member's records were in a mess. All of the trust accounts could not be reconciled. There was gross neglect or a misunderstanding of principles.

[11] It was conceded by Law Society counsel that this is not an integrity issue but was nevertheless a competency and governability issue.

Integrity

[12] Counsel for the LSA noted that this Hearing Committee has not made a finding of deceit or dishonesty, but stated that the conduct illustrates a lack of integrity. Examples such as breaching an Order to the Court, breaching an undertaking to the Law Society and breaching an undertaking to another member were cited as examples of this.

[13] The Hearing Committee was urged to consider the following questions:

i) Could we attribute the breaches to bad book keeping?
ii) Is the Member's word worth anything?

If the answers to each question above is "no" the LSA argued that the only applicable sanction is disbarment.

Governability

[14] Counsel for the LSA argued that the Member took little or no interest in the trust accounting rules. She states that the Member is ungovernable. In support of this proposition counsel for the LSA cited the Member's failure to file annual trust accounting reports (Form S and T). She stated that the Member did not try to find out what his obligations were. This, in her view is a demonstrated lack of interest on the part of the Member to be governed by the LSA. It was only when the Member's trust accounts were frozen that he tried to get things in order. The breach of an undertaking to the LSA (Undertaking Number 4) was cited as the strongest

indicator of the Member's un-governability. Breaches only ended because the LSA intervened with a custodianship. It is the LSA's contention that he became cooperative with the LSA when the LSA stepped in.

[15] Counsel for the Law Society stated that there is a well framed section in the *Hearing Guide* regarding governability:

i) failing to respond to those involved in the Law Society process;
ii) failing to be candid with those involved in the Law Society process;
iii) failing to cooperate with those involved in the Law Society process;
iv) breaching an undertaking given to those involved in the Law Society process; or
v) practicing while suspended or inactive.

THE MEMBER'S RECORD

[16] The Member's discipline record reflects convictions on August 11, 2011 on the following citations that the Member:

a) swore false affidavits of execution on documents and commissioned an affidavit which bore a false signature;
b) failed to be candid with the Law Society;
c) failed to follow accounting rules of the Law Society;
d) misled his clients;
e) failed to serve his clients in a conscientious, diligent and efficient manner;
f) failed to account to his clients and/or provided his clients with incorrect and misleading accounting;
g) failed to provide the Law Society in a timely manner with information and materials requested;
h) prepared a transfer of land with the intent of deceiving others regarding the circumstances of the transfer;
i) acted in an actual or potential conflict of interest situation without taking appropriate safeguards to protect the rights to the clients involved;
j) failed to serve his clients, M and C and a conscientious, diligent and efficient manner; and
k) failed to be competent in the services provided to his clients, M and C.

The Member was given a suspension, a reprimand and a fine ($10,000.00).

[17] There was discussion with respect to whether the "step-up" principle would apply in the circumstances. The Member has been found guilty of conduct deserving of sanction in a previous hearing. Should the sanction in the present matter be increased from what was given previously?

[18] Generally, the "step-up" principle is employed where a Member has been convicted of similar or identical citations to the ones for which the member has been sanctioned in the past. In such circumstances the sanction is increased to focus on specific deterrence.

[19] The Hearing Committee was encouraged not to use the “step-up” principle in this matter. The present citations arise out of the same time period for those in which the Member was previously sanctioned. In addition, there is some overlap regarding the accounting citations between the August 11, 2011 matter and the present case. The Hearing Committee was urged to view the additional citations on a global basis.

ARGUMENT OF THE MEMBER

[20] The following exhibits were submitted by the Member and entered:

> Exhibit 113 letters from Neil Cameron RSW (Ret.) dated April 16, 2012 and June 11, 2011;
> Exhibit 114 letter from Jamal H. Chadi dated April 3, 2013;
> Exhibit 115 letter from Brian J Holtby, Q.C.; and
> Exhibit 116 Partial Transcript of May 29, 2012 proceedings;

[21] The Member is 34 years of age. He obtained his B. Com in 2000 and his LL.B in 2003. The Member completed his articles with Snyder & Associates. Thereafter he worked for a further year as an associate. Subsequently the Member practiced on his own from the fall of 2005 until his interim suspension. He has not practiced since February, 2011.

[22] Counsel for the Member agreed that the global treatment on sentence was the proper approach.

[23] A letter from Brian J. Holtby, Q.C., Assistant Executive Director of Special Prosecutions at Alberta Justice was proffered in support of the Member. One of the last matters that the Member completed was a complex 7 week trial in which Mr. Holtby, Q.C. was Crown counsel. In his letter dated October 25, 2011 Mr. Holtby, Q.C. states, in part:

> “Mr. Juneja defended (the Defendant) competently. He is bright and was well prepared for the trial. He was alive to the strengths and weaknesses of the Crown's case and his closing argument showed an ability to focus on the real issues of the case and make the most of them.
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> Throughout the course of the trial Mr. Juneja was respectful to the Court and civil to Crown counsel. He conducted himself with considerable grace. He had a client who was very difficult to manage and some of his problems with the Law Society had just come to a head. While I am sure these pressures were weighing on him, he did not let them interfere with his work.

> It was my impression that Mr. Juneja did not have the benefit of an office environment that surrounded him with some senior, responsible lawyers who were willing to mentor him and provide him with some serious, mature advice. I think it is unlikely that the Law Society will have to intervene again if Mr. Juneja can find a work environment that provides him with that support."

[24] Counsel for the Member advised that the Member had received an offer of employment from Jamal H. Chadi, Barrister and Solicitor to work at Chadi & Company. This firm focuses primarily on Personal Injury cases and Criminal Law. Mr. Chadi's letter states:

> "… I have known Ajay Juneja approximately eight years. We have represented many co-accuseds through out the years, often on matters that were extremely serious and very complex. I have always known Ajay to be extremely prepared, incredible knowledge concerning the law, and very talented. I have personally heard Judges of both the Provincial Court in The Court of Queen's Bench of Alberta positively speak of his talents and character.
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> I have read the document entitled "Supplemental S. 63 Report" prepared by Loreen Austin (without the appendices), and the June 2010 interim suspension memorandum prepared by Maurice Dumont, Q.C. I understand that many of the allegations contained in Ms. Austin's report are not proven, in particular the allegations concerning dishonesty and misappropriation. Mr. Juneja has advised me that the allegations concerning his failure to follow the accounting rules, breaching an undertaking given to the Law Society and failing to maintain certain funds in trust have been proven.
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> It is with full knowledge of the foregoing I am prepared to offer Ajay Juneja employment with my firm, agreed to directly supervises activities and to provide an undertaking to ensure his compliance with any conditions imposed. My willingness to do so has only increased since the date of my last letter. …
>
> I have the greatest of confidence that Mr. Juneja will abide by any and all conditions imposed by the Law Society. …"

[25] Counsel for the Member proposed that as part of any sanction that conditions be imposed. These conditions may include that the Member:

a) be restricted to practicing criminal defense and personal injury until such time as he has satisfied the appropriate Law Society committees that he is competent to practice in other areas;
b) cooperate with any direction from the Practice Review department;
c) be restricted to working in an employed capacity; and
d) not be permitted to operate a trust account or be responsible for trust accounting.

[26] Two letters authored by Neil Cameron, RSW (Ret.), one dated April 16, 2012 and the other dated June 22, 2011 were reviewed by the Hearing Committee. The letters speak to the

Member attending at Mr. Cameron's office for ongoing alcohol dependency assessments, treatment and counseling. Mr. Cameron states:

> "… Mr, Juneja continues to impress me with his openness and willingness to share personal information concerning his alcoholism and depression, and the circumstances that have led to both of these conditions."

[27] The letter details the Member's self-destructive behavior and continued alcohol dependency but concludes:

> "I believe that it can be fairly stated that the constellation of unfortunate events that have occurred to Mr. Juneja's life have contributed to his behavior dependency on alcohol. Through Mr. Juneja's continued counseling of participation in the S.A.R.P.G., Mr. Juneja has learned how to cope with traumatic events and stress without turning to the use of alcohol. Mr. Juneja has received and accepted advice from senior members of the Law Society who have also dealt with alcohol dependency and continue to be upstanding members of the bar.
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> It is my opinion that Mr. Juneja can be effectively governed by the Law Society of Alberta. This opinion is only strengthened since my report of June 22, 2011. It is based in large part on Mr. Juneja's continued demonstrations of determination and commitment to maintaining abstinence over the long term. I firmly believe that, based on Mr. Juneja's confirmed actions in compliance with directions over an extended period of time, he would undoubtedly abide by the rules of the Law Society and any conditions they may impose."

[28] The Member gave evidence that he could not pin point an exact date when alcohol abuse started. He states that "It was a problem before he realized it was a problem." He partied on weekends, since he was 15 years of age. That pattern continued until his university days. He thought that the frequency that he drank was normal but this changed during law school. During his articling year he began drinking regularly. He states that he would go out with other students and other people in law. He admits having a reputation for being a "party animal." The Member confesses that he thought he may have a problem in 2007 or 2008. He did not recognize the full effect until after the September 2010 interim suspension.

[29] The Member does not blame alcoholism for his bad behaviour. When confronted with this question he confirmed adamantly: "No I am to blame." … " I cannot blame it for what I did." He went on to state that when he was drinking he made poor decisions. He did not do things that he should have done. When asked what assurance the Member could provide that he would not reoffend he replied that he had "learned to handle stressful situations differently."

DISCUSSION

[30] Counsel for the Member urges the Hearing Committee to view the Member's conduct in these matters as relating to a time period before the Member "found the light". That is that the Member is "now" aware of his obligations to the public and the LSA and is willing to be governed appropriately. The Member's conduct relates to a time from 2006 until a Consent Order was granted by Justice T.D. Clackson for the custodianship of the Member's practice on September 13, 2010.

[31] The conduct that Member has been found guilty of, however, in at least two instances, relates to discrete events:

[32] Citation 2 relates generally to the Member's failure to follow LSA accounting rules and to the period of time from 2006 until September, 13, 2010;

[33] Citation 4 relates to the period of time from April 1, 2010 until the Member became unable to further breach the undertaking because the Member's practice was subject to a custodianship. This Citation relates to a breach "which took place over an extended period of time, multiple breaches existed and (the Member) exhibited a complete disregard for the undertaking given. It cannot be argued by the Member that Citation 4 relates solely to the Member's failure to follow accounting rules. There is an added element. This element is the Member's unwillingness or reluctance to be governed by the Law Society and his blatant disregard for a promise made. This, in the opinion of the Hearing Committee is the most serious Citation that has been made out during the Hearing.

[34] Citation 8 and 9 relate to the Member failing to maintain adequate funds in his trust account to meet trust obligations and to the Member's breach of his undertaking to another Member. Through a series of transactions in the Member's accounts the breaches occurred. Looking at the series of transactions in the best possible light, it is arguable that the Member's failure in this regard is attributable to the matters generally described in Citation 2. That is, the Member's books of account were in such disarray that the Member need not have had any added element (such as the direct intention to breach the Order) for the Citations to be made out.

[35] Citation 10 relates to the Member breaching a Court Order originally granted on January 11, 2005 and subsequently modified on June 7, 2006. The Member breached the Court Order by not depositing the subject funds ($11,500.00) into an interest bearing trust account and by paying out the funds prematurely without further Court Order or agreement. As with Citations 8 and 9 and looking at the Citations in the best possible light, this Citation may also have arisen because of the state of the Member's books of account.

[36] What this Hearing Committee is left with is one Citation that relates to governability (Citation 4) and four that when examined in the best light possible, relate generally to competence (Citation 2, 8, 9 and 10). The Member wishes the Hearing Committee to believe that he now understands that he must accept governance from his professional regulator. The Hearing Committee has difficulty believing this. In our view, the Member should not have

breached his undertaking to the LSA. There was a flagrant disregard for the authority of the Member's regulator. Of particular concern is that the Member did not discontinue using the account on his own. Rather, it was necessary for the LSA to impose a custodianship on the Member to stop the continuing breach. The Member now says that failing to abide with the Undertaking was "the biggest mistake that (he) ever made." We are uncertain whether the Member meant it was the biggest mistake because "he got caught" and there were "dire consequences" or whether it was the biggest mistake because he had a lapse in judgment and did not realize that failing to abide with the Undertaking goes to the very root of governance of the profession.

SANCTION

[37] The Hearing Committee is of the view that the behavior of the Member cannot be countenanced. As such, the Hearing Committee imposed a suspension for a period of one day. The suspension was imposed on the Member, keeping in mind that the Member has been effectively suspended for 33 months. But for the effective suspension 33 months the suspension imposed would have been much greater. A suspension of this nature is necessary to demonstrate that conduct of the Member cannot be excused. The preservation of the reputation of the profession also demands a substantial suspension as a sanction.

[38] The Hearing Committee is hopeful that the Member has, in his own words, "seen the light". The Member has represented that he is "aware of his obligations to the public and the LSA and is willing to be governed appropriately."

[39] The Hearing Committee is satisfied that upon completion of the suspension the public interest can be protected through conditions imposed upon the Member. The following conditions shall be placed upon the Member as follows:

1. the Member shall be restricted to a practice of criminal defense and personal injury until such time he has satisfied the appropriate Law Society committees that he is competent to practice in other areas;
2. the Member shall cooperate with any direction from Practice Review;
3. the Member shall be restricted to working in an employed capacity;
4. the Member must be directly supervised and undertaking given by his supervisor to ensure compliance with the conditions that have been imposed;
5. the Member shall not operate a trust account or be responsible for trust accounting until such time as the Trust Safety Department directs otherwise;
6. the Member shall take such legal accounting courses as the practice review department or credentials and education department finds necessary.

[40] There shall be a notice to the profession.

[41] There shall be no notice to the Attorney General.

[42] There shall be the redaction of the usual portions of the decision when published.

[43] The Member shall pay costs in the amount of $25,000, such costs to be payable within one year from the time that the Member is eligible for reinstatement.

Dated this 3rd day of January, 2014.

Anthony G. Young, Q.C. (Chair)	Rose M. Carter, Q.C. (Bencher)

Derek Van Tassell Q.C. (Bencher)