IN THE MATTER OF PART 3 OF THE
***LEGAL PROFESSION ACT*, RSA 2000, c. L-8**

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF GREGORY LIAKOPOULOS
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Cal Johnson, QC – Chair
Grace Brittain – Adjudicator
Ken Warren, QC – Bencher

Appearances
Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
E. Mark Keohane – Counsel for Gregory Liakopoulos

Hearing Date
April 12, 2021

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Gregory Liakopoulos (Liakopoulos) is a suspended member of the LSA. He was admitted to the LSA on June 19, 1988, and was suspended on March 15, 2019. Prior to his suspension, Liakopoulos had practiced as a partner with a national law firm in its Calgary office in the area of real property and commercial law. Liakopoulos submitted a self-report to the LSA on August 7, 2018 (the Self-Report) in relation to his role as the sole trustee of the P.R. Trust (the Trust) and Trust funds held in a bank account established by Liakopoulos in the name of the Trust. Over a period of approximately two years, he had transferred a little over one million dollars from the Trust to the bank account of a numbered company of which he was the sole shareholder and director. In his report, he characterized this as a secured loan but acknowledged that he used the money for personal gambling purposes. He acknowledged that he was not in a position to ensure repayment.

2. Shortly after the Self-Report, Liakopoulos resigned from his firm and the LSA ordered an investigation into the circumstances (the Investigation). The Investigation confirmed an outstanding defalcation of approximately $925,300, plus bank fees. It also confirmed the

purported loan was not disclosed to the beneficiary of the Trust (the Beneficiary) at the time of transfer and was not authorized by the Beneficiary. In addition, the actual loan documentation was not physically created until significantly after the transfer of moneys, after the Beneficiary made a request for distribution of the Trust funds and very shortly before the Self-Report. That creation was only a day prior to a conference telephone call arranged between Liakopoulos and the Beneficiary because of the very recent disclosure of the loan to the Beneficiary.

3. Subsequent to the Investigation, citations were authorized and issued by the Conduct Committee of the LSA as follows:

    1) It is alleged that Gregory Liakopoulos misappropriated or wrongfully converted funds entrusted to him in his capacity as trustee of the P.R. trust, and that such conduct is deserving of sanction;

    2) It is alleged that Gregory Liakopoulos breached his fiduciary duty to the beneficiary of the P.R. trust by transferring trust funds for his own use and benefit without the knowledge or authorization of the beneficiary, and that such conduct is deserving of sanction; and

    3) It is alleged that Gregory Liakopoulos failed to act with honesty and integrity by failing to inform the beneficiary of the P.R. trust of all information known to him that affected the beneficiary's interests, and that such conduct is deserving of sanction.

4. On April 12, 2021, the Hearing Committee (Committee) convened a hearing into the conduct of Liakopoulos based on these citations.

5. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Liakopoulos, the Committee found Liakopoulos guilty of conduct deserving of sanction on each of the citations pursuant to section 71 of the *Legal Profession Act* (the *Act*). The reasons for that decision are set out below.

6. The Committee also found that, based on the facts of this case, the appropriate sanction is disbarment. In accordance with section 72 of the *Act*, the Committee orders that Liakopoulos be disbarred as a member of the LSA, effective April 12, 2021.

7. In addition, pursuant to section 72(2) of the *Act*, the Committee orders costs of $35,901.35, payable on or before December 31, 2022.

Preliminary Matters

8. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into the conduct of Liakopoulos proceeded.

Facts Relating to Citations

9. The facts in this matter are largely undisputed. While a member of another large national law firm in its Calgary office, Liakopoulos agreed to act as trustee of the Trust upon its formation in approximately 2006. The Beneficiary was a company incorporated in the British Virgin Islands (BVI). The Trust moneys were primarily invested in a limited partnership (the Partnership) developing a real estate project in Quebec. The Partnership distributed approximately $2.6 million (CAD) to the Trust and, of that amount, approximately $1.076 million was distributed from the Trust's bank account to the Beneficiary in 2010. The balance of the funds remained in the Trust's bank account.

10. In approximately 2013, and after Liakopoulos had relocated to his new firm, discussions were held over an extended period of time with a lawyer, ER, who acted on behalf of the Beneficiary and who ultimately gave video evidence at the Hearing. The discussions initially focused on the potential distribution of the remaining trust monies to the Beneficiary. In July 2014, Liakopoulos provided three options to ER for the distribution, taking into account certain tax consequences that Liakopoulos had identified as a result of discussions with a tax accountant at a national accounting firm that had been involved at the time of the formation of the Trust. In December 2014, Liakopoulos proposed an arrangement whereby a loan of the remaining monies would be made to the sole director and shareholder of the Beneficiary (PR), and Liakopoulos would receive a fee of $50,000 and an indemnity in respect of future tax liabilities. The Trust's bank balance at the end of 2014 was $1,382,886.02.

11. Discussions in relation to the proposed distribution loan arrangement continued over an extended period with Liakopoulos asking many times during 2015 for confirmation from the Beneficiary with respect to the proposed arrangement but without receiving any confirmation, updates or instructions. At some point in 2016, an issue arose with respect to the corporate registration of the Beneficiary in the BVI and matters languished without any resolution to the issue.

12. In August 2016, Liakopoulos withdrew the $50,000 fee amount from the Trust bank account although none of the proposed loan or indemnity arrangements had been agreed to or concluded. Between October 2017 and June 2018 Liakopoulos transferred a total of $950,000 from the Trust bank account to the account of a numbered Alberta Ltd company (109), a company of which Liakopoulos was the sole shareholder and director. In April 2018, a further $50,000 was transferred to his firm's trust account and a

portion of that was provided to a client to discharge certain liens. The balance of $31,954.45 was transferred from the firm trust account to the bank account of 109.

13. In late June 2018, ER advised Liakopoulos that the issue with respect to the BVI registration of the Beneficiary had been resolved and that, since he expected the limitation period in respect of the tax liability had expired, he was requesting that the Trust funds be distributed to the Beneficiary and that the Trust be dissolved.

14. In his evidence at the Hearing, and in his statements made during the Investigation, Liakopoulos indicated that he had persuaded himself before transferring the funds that a reading of the Trust agreement allowed him, as trustee, to invest the funds of the Trust by way of a loan to a company in which he had an interest. However, he did not contact ER to advise the Beneficiary of his conclusions and of his intention to proceed in this fashion, nor did he seek any approval for this action. In his mind, he justified going ahead based on Beneficiary's prior lack of responsiveness to his proposals or inquiries.

15. Liakopoulos was initially quite vague in his third interview with the LSA investigators as to the time of creation of the 109 loan and accompanying security documentation. However, when faced with clearly documented evidence that the documentation was only created on June 30, 2018, immediately before a scheduled conference call with the Beneficiary, Liakopoulos reluctantly conceded that it had all been created after the fact. The Committee finds as a fact that the documentation was created for the purposes of that upcoming phone call.

16. On July 31, 2018, a conference phone call took place between ER, Liakopoulos and the P.R. Liakopoulos advised that the Trust funds had been invested in a "non-liquid investment". He also indicated it would take 18-24 months to realize on the investment and that a tax clearance certificate would be required for distribution of the Trust funds at that time. No disclosure was made that the funds had actually been loaned to 109, nor that 109 was solely owned and controlled by Liakopoulos. On August 2, 2018, Liakopoulos forwarded copies of the loan and security documents and banking statements (up to the end of August 2016) to P.R. and ER, and then disclosed that his company, 109, was the recipient of the loan.

17. On August 7, 2018, Liakopoulos filed the Self-Report that provided background information relating to the formation of the Trust and his role as trustee, and disclosed the loan to 109. He indicated that the purpose of the loan was to cover his own personal gambling debts and to fund his gambling addiction. He acknowledged that he should not have made the loan. He offered to cooperate with the LSA and to sit down with the LSA investigators to provide a more comprehensive report.

18. Pursuant to the Investigation, a number of third parties were contacted and information demands were made of some of them. Liakopoulos' firm supplied electronic records that established that the loan and security documentation from 109 were not created at the

time that moneys were taken from the Trust bank account, but had been created on July 30, 2018, after the fact.

19. In the Self-Report, Liakopoulos noted that he had been suffering from a gambling addiction for close to 20 years. Pursuant to a number of interviews conducted by the LSA investigators with Liakopoulos, he disclosed that in 2015 he had approached a friend for assistance with financial issues arising from his gambling. His parents had helped him out in 2015 by mortgaging their business to pay out that friend and deal with tax arrears. The addiction issues appeared to accelerate around 2017 and led to Liakopoulos utilizing various medications without a resolution to those addiction issues. At one point, he entered into a voluntary casino ban through the Alberta Gaming and Liquor Commission (AGLC) but continued his addiction using Video Lottery Terminals in various bars. Liakopoulos resigned from his firm on August 9, 2018, at its request.

20. During his evidence at the Hearing, Liakopoulos indicated that after the Beneficiary sought the distribution of the Trust funds he viewed his issue as a financial issue. He simply had a payback problem, which he thought he could resolve. He did not view it as much more than that and attributed this to his addiction. Since he was then in full addiction mode, he believed that he could pay it back. Throughout his testimony at the Hearing, Liakopoulos emphasized that his addiction was a disease that precluded him from making the rational judgements and assessments that his role as a fiduciary required of him in the circumstances. In the Investigation, he indicated that he thought he was discharging his fiduciary duty by papering the loan. He indicated he was diagnosed as having a dysfunctional emotional response preventing him from thinking like a lawyer.

21. At various points during the Investigation interviews (the Interviews) with the LSA investigators, Liakopoulos referred to medical interventions related to his addiction. He indicated he first sought professional counselling in approximately 2004 - 2005, but did not have any other formal treatment between then and 2015. He took medication for ADHD, but which did not address his gambling addiction. He expressed that he had no other addiction issues, although in later stages admitted to spending inordinate amounts of time playing video games. In August 2018, in a handwritten note to his family, he expressed his shame and embarrassment, conceded that he had suicidal thoughts and was experiencing self-loathing and self-hate. After the Self-Report, he indicated that he had very limited financial means, which meant that after his resignation he was only able to attend a two-week outpatient program, some monthly counselling sessions and some counseling from the physician monitoring his medications.

22. At the Hearing, Liakopoulos provided a letter dated February 14, 2020, from Dr. RH (the Dr. RH Letter) indicating that Liakopoulos had been in his care since 2018 for his gambling addiction. The Dr. RH Letter described previous diagnoses and prescriptions as "spurious" and distracting from his diagnosis of addiction. Dr. RH diagnosed Liakopoulos as having met the criteria for Pathological Gambling Addiction and

considered him unfit for work until the end of January 2019 due to addiction and mental health problems. He detailed the treatment programs Liakopoulos had attended subsequent to his resignation. The Dr. RH Letter indicated that Liakopoulos faced extreme financial and emotional hardship over the prior two years, expressed the view that the defalcation occurred because of the addiction and mental health issues and expressed the conclusion that Liakopoulos was the subject of a wrongful dismissal. This report was only provided to the Committee and counsel for the LSA shortly before the Hearing commenced. Dr. RH was not called to give evidence, nor was he qualified as an expert witness or in relation to his particular medical expertise.

23. Apart from the Dr. RH Letter, no independent medical evidence was provided to the Committee at the Hearing or in any of the exhibits in the Exhibit Binder. In answer to a question from Counsel for Liakopoulos, the LSA investigator indicated that the Investigation did not include any particular follow-up with the Grey Eagle Casino or AGLC in relation to the gambling ban, nor were inquiries made of any physicians who attended upon Liakopoulos.

Submissions of the LSA

24. LSA Counsel referenced section 3.5-1(b) of the LSA Code of Conduct (Code), including the obligation to act as a professional fiduciary in preserving a client's property entrusted to a lawyer and to care for a client's property as would a careful and prudent owner. LSA Counsel briefly reviewed the evidence of the Investigation and the various admissions made by Liakopoulos and submitted that they clearly established each of the citations. A question from a Committee member noted that the Trust was not a client of Liakopoulos' law firm, but Liakopoulos was acting in his personal capacity as a trustee. The LSA argued that distinction did not matter, as there was a sufficient nexus in the behaviour to his role as a lawyer and to his duties under the Code in his professional and personal capacity. LSA Counsel cited *Yee* v. *Chartered Professional Accountants of Alberta*, 2020 ABCA 98 as authority from the Alberta Court of Appeal. The Court noted that in order for private conduct to rise to the level of professional misconduct, it must engage the broader public interest or the reputation of the profession (at paragraph 43). The submission here was that the conduct in question clearly engaged both issues, dealing as it did with issues of honesty, integrity and fiduciary duties of a trustee entrusted with the property of the Beneficiary.

25. LSA Counsel referenced the individual citations and evidence before the Committee and argued these established each of those citations as conduct deserving of sanction.

Submissions of Counsel for Liakopoulos

26. Counsel for Liakopoulos argued that a document dated November 19, 2018 provided by a Canadian law firm representing the Beneficiary and described as a "Statement of Facts" from P.R. should not be accepted as evidence. This was on the basis that it had

not been sworn and that the evidence should have been obtained by having the individual appear as a witness at the Hearing. The Committee considered the arguments of Counsel on the matter and determined that it would be accepted as constituting a record, but that it would be considered in the context and limitations of the circumstances under which it was provided and that this would go to the weight accorded to that document. Other than this submission, Counsel for Liakopoulos generally agreed with the submissions of LSA Counsel on the issue of guilt on the citations. Counsel for Liakopoulos took some pains to emphasize that the matter was proceeding as a full hearing, as opposed to a summary proceeding with an Agreed Statement of Facts and Admission of Guilt, largely due to collateral considerations and other possible proceedings, as opposed to Liakopoulos contesting or disputing the citations themselves.

Analysis and Decision

Legislation, Rules, Guidelines

27. The Committee notes and accepts the submission of LSA Counsel that section 49 of the *Act* is applicable, which provides as follows:

> **49(1)** For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
>
> (a) is incompatible with the best interests of the public or of the members of the Society, or
> (b) tends to harm the standing of the legal profession generally, is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

28. The Committee also accepts the argument of LSA Counsel that section 67 of the *Act* provides the applicable burden of proof in this circumstance:

> **67** When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member.

The standard of proof on the member is on the balance of probabilities.

29. Section 3.5-1(b) of the Code previously referenced by LSA Counsel deals with the obligations of a lawyer in relation to the property of a client. The Committee notes that the relationship between Liakopoulos and the Beneficiary did not arise from a solicitor/client relationship and accordingly the Committee examined the conduct in question in the light of the fiduciary relationship of trustee and beneficiary, and the duties and obligations of Liakopoulos thereunder. Section 7.3-1 of the Code requires that a

lawyer "who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence or competence". The commentary to that section notes that whether this outside activity is unrelated to, or only overlaps the practice to some extent, the LSA must maintain an interest in its nature and the manner in which it is conducted. Lawyers are obligated to aspire to the highest standards of behaviour at all times and not just when acting as lawyers. The behaviour of a lawyer may affect generally held opinions of the profession and the legal system. The Committee accepted that the circumstances of this case certainly engaged these considerations given the evidence provided on behalf of the Beneficiary at the Hearing that the status of Liakopoulos as a lawyer with a well-respected and major law firm did have an impact on its comfort with providing Trust funds to Liakopoulos and seeking his advice and recommendations.

30. In *Yee* the Court noted at paragraph 45:

> "Many factors can be considered to determine if private conduct amounts to professional misconduct: ***Fountain v British Columbia College of Teachers***, 2013 BCSC 773 at paras. 32-3. The closer the conduct comes to the activities of the profession, the more possible it is that personal misconduct will amount to professional misconduct. That is the lesson of ***Marten*** and ***Ratsoy***. It is, however, an error for a discipline committee to assume that because certain "events happened" that are in some sense undesirable or improper, that automatically amounts to "professional misconduct". An accountant may, as one member of the Discipline Tribunal put it, be an accountant "from the time you get up until you go to bed at night", but that does not make everything an accountant does a matter of professional discipline. Section 1(t), and the cases just cited, recognize that private actions can amount to professional misconduct, but they are not intended to allow the Institute to regulate every aspect of its members' private lives."

Citation 1 – ***It is alleged that Gregory Liakopoulos misappropriated or wrongfully converted funds entrusted to him in his capacity as trustee of the P.R. trust, and that such conduct is deserving of sanction.***

31. Tab 5 of the Exhibit Binder entered into evidence at the Hearing contained the September 12, 2006 Deed of Trust (the Deed) between the Settlor of the Trust and Liakopoulos, as trustee. The Deed clearly named the Beneficiary and the obligation of Liakopoulos to hold the trust fund in trust for the Beneficiary and for the benefit of the Beneficiary. The Deed contains broad powers of investment and management, as Liakopoulos had noted in the Investigation and at the Hearing, contained a power to make loans upon security and a power to invest in debentures or other securities issued by a corporation, whether or not the Trustee might have a financial interest therein.

32. Liakopoulos convinced himself that these provisions of the Deed allowed him to make a loan to 109, notwithstanding that 109 had no assets, nor carried on any business. The Investigation Report indicated that Liakopoulos had opened a TD bank account for the Trust and Liakopoulos was the sole signing authority. The Investigation Report also documented that from August 2016 to June 2018, Liakopoulos transferred out a total of $1,100,000 dollars to the bank accounts of 109, with the exception of a $50,000 transfer made directly to the trust account of his law firm.

33. The broad and permissive provisions of the Deed are not the sole context in which to examine this citation. From the Investigation Report it is evident that as early as November 2013 discussions commenced between ER and Liakopoulos concerning the desire of the Beneficiary to obtain a distribution of the Trust's funds. In March 2014, ER indicated that he was concerned with a delay in achieving a distribution as desired by the Beneficiary. In July 2014, taking into account identified tax issues, Liakopoulos provided three options for a distribution of some or all of the funds of the Trust. In September 2014, ER indicated that the Beneficiary was open to all options but reiterated a desire to distribute funds as soon as possible. In December 2014, Liakopoulos responded by proposing a loan from the Trust to PR of $1,320,000, to be documented by way of a promissory note with a fee of $50,000 to Liakopoulos.

34. Despite repeated inquiries by Liakopoulos from December 2014 to September 2015, he did not receive a reply from the Beneficiary. In September 2015, ER requested a bank statement to confirm the Trust's bank balance. It confirmed a balance of $1,382,886.02 at the end of 2014. Correspondence in relation to the loan proposal continued without coming to a consensus conclusion to proceed with the loan. In mid-2016, ER alerted Liakopoulos of a problem with the Beneficiary in that its BVI registration was dissolved in 2015 for non-payment of license fees and had to be restored, which delayed matters further.

35. It was evident from the various discussions and correspondence between ER and Liakopoulos that the Beneficiary was focused on obtaining a distribution of all of the remaining monies in the Trust, but that tax and BVI registration issues were causing delays and complications. It was also clear that no definitive plan was arrived at, nor was any authorization or approval given by the Beneficiary to any of the proposals put forth by Liakopoulos. In the context of these discussions, it was also plain that no discussions were had about investing or loaning Trust funds and such a plan would have been contrary to the expressed desire of the Beneficiary for the earliest possible distribution.

36. In the first Interview with the LSA investigators, Liakopoulos acknowledged that in September 2017 he began to look at the Deed to ascertain "How could I get this money into my hands?" At the Hearing, Liakopoulos testified that he convinced himself that he could repay the loan from a "big score", that he would ultimately be bailed out by his family or that he would "hit the lottery". None of these was a feasible, timely or secure method for repayment to the Trust.

37. The Deed contained a power of the Trustee to lend money but required security therefor unless the loan was made to the Beneficiary. The Debenture of 109 contained a grant of security, but since 109 had no assets other than the funds already taken from the Trust, that security was more illusory than real. The Trust contained broad powers to invest in corporations, mortgages, mortgage bonds and other vehicles, but in each case tied that investment to a direct interest in real property or in a vehicle that owned interests in real property. 109 had no such assets. As detailed in the Investigation Report and elsewhere in the evidence, the one investment made by the Trust before the loan to 109 was in a partnership owning interests in real property in Quebec.

38. The Deed specifically obligated Liakopoulos to manage the Trust "in a manner which would be considered reasonable and prudent in the management of the business, for the benefit of and in the best interests of the Beneficiary". The Deed contained a relatively low mandated standard of care for trustees but did not absolve the trustees of responsibility for "the gross negligence, willful misconduct or willful breach of this Trust or fraud by such person".

39. Liakopoulos made a loan to his personal company for his own personal benefit and then sought to justify that loan to himself through a tortured reading of the Deed. In no sense could the 109 loan and security be interpreted as acceptable or permissible even within the very broad confines of the language of the Deed. The arrangement was neither prudent, reasonable or in the best interests of the Beneficiary.

40. The Committee determines that Liakopoulos is guilty of conduct deserving of sanction in relation to Citation 1.

Citation 2 - ***It is alleged that Gregory Liakopoulos breached his fiduciary duty to the beneficiary of the P.R. trust by transferring trust funds for his own use and benefit without the knowledge or authorization of the beneficiary, and that such conduct is deserving of sanction***.

41. The materials before the Committee included the decision in *Valard Construction Ltd. v. Bird Construction Co.*, 2018 SCC 8.Brown, J. writing for the majority, provides a succinct statement of the fiduciary duties of a trustee at page 236:

> Because a trust divides legal and beneficial title to property between a trustee and a beneficiary, respectively, the "hallmark" characteristic of a trust is the fiduciary relationship existing between the trustee and the beneficiary, by which the trustee is to hold the trust property solely for the beneficiary's enjoyment. As a matter of law, this fiduciary relationship, in turn, impresses the office of trustee with certain duties. In particular, three duties have been recognized in Canadian law as fundamental. First, a trustee must act honestly and with that level of skill and prudence which would be expected of the reasonable person of business

> administering his or her own affairs. Secondly, a trustee cannot delegate the office to another. And thirdly, a trustee cannot profit personally from its dealings with the trust property or with the beneficiaries of the trust.

The footnotes to the text of this part of the decision refer to a number of texts and academic writings on the law of trusts.

42. During the Interviews, Liakopoulos was asked about his understanding of his fiduciary duties. At one point in answering the question he states:

> I never asked myself the question, "Does the decision itself discharge your fiduciary duty?" … I jumped ahead and said, "As a fiduciary I'm papering everything". That that somehow was – by doing that it was all I needed to do without getting into the question of, "Okay, should you be doing this in the first place?"

43. The substance of Citation 2 is that Liakopoulos transferred funds of the Trust for his own use and benefit, without the knowledge or authorization of the Beneficiary. The evidence was unequivocal that there was no knowledge by the Beneficiary, until long after the fact and only after ER had followed up on a conference call where Liakopoulos had incompletely disclosed the fact of a loan made by the Trust. Even in that conference call, Liakopoulos acknowledged that the Beneficiary did not learn anything regarding 109, the terms of the loan or "any of the specifics". It was only because of that ER follow-up that it became apparent that 109 was the recipient of the funds. As 109 had no assets or business, and Liakopoulos was the sole shareholder and director, it was also readily apparent that this purported loan was for the use and benefit of Liakopoulos in pursuance of his admitted gambling addiction.

44. While the parties had numerous back-and-forth discussions as to possible means of moving monies from the Trust, it was always clear that this was to be for the purposes of returning the Trust funds to the Beneficiary and there was clearly no authorization to do anything else.

45. The Committee notes the admission of Liakopoulos in his Self-Report that:

> The purpose of this loan was to cover my own personal debts that arose from gambling and to fund my gambling … Of course, I recognize that I should not have loaned money from the Trust to a company controlled by me, for gambling purposes.

46. The Committee determinesd that Liakopoulos is guilty of conduct deserving of sanction in relation to Citation 2.

Citation 3 - ***It is alleged that Gregory Liakopoulos failed to act with honesty and integrity by failing to inform the beneficiary of the P.R. trust of all information known to him that affected the Beneficiary's interests, and that such conduct is deserving of sanction.***

47. Liakopoulos made a number of unauthorized transfers of Trust funds without disclosing highly important and critical information to the Beneficiary. Namely, that he was making transfers contrary to the expressed request of the Beneficiary for the release and return of all Trust funds; a transfer was made for the benefit of one of Liakopoulos' clients without any substantive documentation; and transfers purportedly made in payment of a fee to Liakopoulos that had been briefly proposed but never authorized. These deliberate omissions seriously and adversely affected the interests of the Beneficiary. In acting in this fashion, he did so with a total disregard for the honesty and integrity required of him as essential elements of his fiduciary duties as a trustee.

48. The Committee determines that Liakopoulos is guilty of conduct deserving of sanction in relation to Citation 2.

Analysis and Decision on Sanction

49. The *Act* sets out the general definition of conduct deserving of sanction at section 49(1):

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

50. The LSA Hearing Guide applicable to this Hearing was published in February 2013 and updated in April 2016 (the Hearing Guide). At paragraph 57 of the Hearing Guide the leading case of *Bolton v. Law Society,* [1994] 2 All ER 486 in relation the issues raised by this section of the *Act* is quoted as follows:

> The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain the public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission … A profession's most valuable asset is its collective reputation and the confidence which that transpires.

51. At paragraph 58 of the Hearing Guide references the text by Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline,* which notes that:

> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined … Any other result would undermine public trust in the profession.

52. During the Investigation and during the Hearing, Liakopoulos raised a number of considerations in explanation or mitigation of his conduct, including:

    a. He did not have a prior conduct record with the LSA after almost 20 years of practice;
    b. He was cooperative and candid with the LSA during the Investigation and beyond. He did not seek to delay or hinder the Investigation and readily provided the documentation available to him;
    c. His conduct was a result of a dysfunctional emotional response, or as he characterized it, "a wiring" or a "brain disease". Because he was in "full addiction", he was incapable of seeing things as a lawyer should and was incapable of understanding that he needed help; and
    d. At the Hearing, Liakopoulos provided a letter dated February 14, 2020 by Dr. RH indicating that he had been seeing Liakopoulos since August 2018 for assessment and treatment of a gambling addiction. He states that Liakopoulos had previously been misdiagnosed with ADHD in 2015 resulting in inappropriate prescriptions that only worsened his judgement. He states that the misappropriation occurred because of the gambling addiction and Liakopoulos "being ill with Mental Health problems". He expresses the view that the unethical conduct was due to severe cognitive and affective distortions. He further expresses his opinion that Liakopoulos had been subjected to a "wrongful dismissal".

53. The Committee considered each of the proposed mitigating factors. The fact of no prior conduct record, while helpful in some conduct situations, is of relatively minor importance given the gravity and egregious nature of the conduct in question. Misappropriation is a major and often fatal misstep in professional conduct and cannot be mitigated by a prior unblemished record. Similarly,, the cooperation with the LSA in the Investigation, while to the credit of the member and helpful both to the process and this Committee, cannot serve to erase or put a favourable spin on the detrimental effect of the conduct on the reputation of the profession. Counsel for Liakopoulos argued in relation to sanction that this cooperation distinguished this case from that of *Law Society of Alberta* v. *Beaver*, 2017 ABLS 2. However, there, the hearing committee considered cooperation and self-reporting as no more than a neutral factor. We agree. In some small measure, it may distinguish this case from some other misappropriations. However, that would at best only be considered as a potentially relevant consideration at a future reinstatement application.

54. The question of the "medical evidence" produced only at the Hearing is also a problematic consideration in terms of mitigation. Counsel for Liakopoulos argued for the Committee to take an enlightened and sympathetic view to the important issues of addiction as they affect the profession. Those are no doubt pressing issues for the profession to address, but in the context of this Hearing, neither the Committee nor the LSA were presented with cogent and persuasive medical evidence of a causal link between the misappropriation behavior and the gambling addiction. The Dr. RH letter was only produced immediately before the Hearing and without affording the LSA any opportunity to obtain or provide its own medical evidence or cross-examine the author of the Dr. RH letter. Counsel for the LSA referred to the medical evidence adduced in the *Beaver* case indicating that, while much more extensive, it nevertheless was found to be unhelpful or not particularly persuasive for a variety of reasons, and specifically noted the absence of medical evidence of rehabilitation. As noted in *Beaver*, while medical reports might deal with the risk of reoffending behaviour, it cannot address the regulatory task of demonstrating to the public that the LSA is responding to the conduct in a manner that leads to a high degree of public confidence in the profession.

55. Counsel for the LSA argued that the present situation demonstrates both aggravating factors and factors in common with *Beaver* where disbarment was ordered. These factors include:

    a. Large sums of money misappropriated in a significant number of transactions over an extended period of time;
    b. The absence of full disclosure to the Beneficiary;
    c. The creation of fictional documents to attempt to hide or justify the misappropriation; and
    d. A self-report at a late stage after it had become painfully obvious that the misappropriation could not be covered up or justified.

56. Paragraph 70 of the Hearing Guide details a number of specific factors relevant to the determination of sanction. Examining some of those factors relevant to this Hearing, the Committee notes:

    a. The conduct raises concerns about protection of the public. For Liakopoulos to act in his own selfish interests when entrusted with funds in a fiduciary capacity is problematic;
    b. The conduct raises concerns about maintaining public confidence in the legal profession. The Book of Authorities provided at the Hearing included the Sanction Report in the matter of *Beaver*. There it was noted: "The public confidence in the profession is fundamentally much more than simply brand awareness". Liakopoulos was in his position as trustee of the Trust precisely because he was a lawyer. His status during his time as trustee as a partner with two eminent national law firms no doubt enhanced that position. The blatant

disregard for preservation of the trust property and his fiduciary duties strikes at the heart of the standards of conduct that the public expects of lawyers, and which is fundamental to the trust the profession expects to be reposed in it;

c. The conduct raises concerns about the ability of the LSA to govern its members effectively. Hundreds of millions of dollars flow through lawyers' trust accounts every year, all with the expectation and understanding that their preservation is a sacred obligation which the profession takes very seriously. For a member to act as cavalierly as Liakopoulos did in pursuance of his own self-interest must only lead to concerns about the ability of the LSA to ensure that the member would not act equally irresponsibly and unprofessionally when dealing with funds entrusted by clients directly;
d. The conduct involved intentional, knowing behaviour by Liakopoulos, which he rationalized in his own mind and then documented after the fact when it became clear that his misappropriations were about to be discovered. In addition, the misappropriation was purely for the personal benefit of Liakopoulos, for which there was no alternate explanation or technical justification;
e. The injury caused by the conduct was severe in terms of the monetary misappropriation. Since the conduct occurred outside of a solicitor/client relationship, the prospects of recovery were substantially lessened;
f. There were multiple, repeated and routine misappropriations that occurred over an extended period of time and which, in the end, Liakopoulos tried to conceal from the Beneficiary until it was obvious that there was no other course of action open. It was only then that Liakopoulos made his Self-Report;
g. This clearly involved a severe breach of trust and fiduciary duty;
h. There was no evidence of restitution;
i. The motives were both dishonest and selfish
j. There did appear to be personal or emotional problems, but without sufficient or credible medical evidence to substantiate a causal link; and
k. There was very late disclosure to the injuriously affected party.

57. Taking all of these factors into account, the Committee finds disbarment to be the appropriate sanction. While the misappropriation did not occur in a direct solicitor/client relationship, the conduct strikes at the very heart of issues of integrity and honesty. Any sanction short of disbarment in this case would undermine public confidence in the profession and send an inadequate and adverse message in terms of deterrence to the profession as a whole.

Concluding Matters

Referral to the Minister of Justice

58. At the Hearing, the Committee asked for written submissions on the issue of a referral to the Minister of Justice. Referral to the Minister of Justice is governed by the provisions of section 78(6) of the *Act* which in part reads as follows:

> ... if following a hearing under this Division, the Hearing Committee ... is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Hearing Committee ... shall forthwith direct the Executive Director to send a copy of the hearing record to the Minister of Justice and Solicitor General.

59. The written brief of the LSA proposed that the relevant considerations of the Criminal Code of Canada are as follows:

> a. Criminal Breach of Trust – Criminal Code section 336
>
> Everyone who, being a trustee of anything for the use or benefit, whether in whole or in part, of another person, or for a public or charitable purpose, converts, with intent to defraud and in contravention of his trust, that thing or any part of it to a use that is not authorized by the trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
>
> b. Theft - *Criminal Code* section 322(1)
>
> Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent
>
> (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
> (b) to pledge it or deposit it as security;
> (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
> (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted
>
> c. Fraud - Criminal Code section 380(1)
>
> Everyone who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretense within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,
>
> (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars;

60. The Committee had asked for submissions on the limited question of possible provisions of the Criminal Code applicable to the issue of a referral but reserved to itself the question of whether there should be a referral and did not request submissions on that

aspect. The Committee accepts the submission of the LSA that referrals to the Minister of Justice are mandatory if the Committee is of the view that there are reasonable and probable grounds to believe that Liakopoulos committed any of the referenced offences.

61. Two of the proposed offences contain a specific element of intent. Counsel for Liakopoulos argued that the evidence before the Committee did not support a requisite finding of intent. Similar arguments were raised before the hearing committee in *Law Society of Alberta* v. *Amantea*, 2020 ABLS 14, but were dismissed in that case in a factual scenario dissimilar from the current case. The Committee determined that the actions of Liakopoulos in respect of each of the offences was sufficiently intentional as to allow the Committee to form the opinion that there were reasonable and probable grounds for concluding that each of the offences had been committed. It is not necessary for the Committee to come to definitive conclusions that are more properly a matter for the Courts. Similarly, the Committee accepted the position put forward by the LSA, and as has been accepted in other hearings referenced in its brief, that it is not within the scope of the Committee to determine if Liakopoulos has a defence to any of the proposed offences.

62. Given the findings of the Committee in respect of the significant breaches of trust and fiduciary duties, misappropriation and wrongful conversions of Trust funds for his own personal use, and the failures of honesty and integrity, the Committee determined that a referral to the Minister of Justice in respect of each of the three offences is justified.

Costs

63. The Committee also requested submissions from the parties on the issue of costs. The LSA asked that costs be ordered with a deadline in place, without taking a position on either the quantum of the costs or the deadline date. Counsel for Liakopoulos noted simply that Liakopoulos continues to be an undischarged bankrupt and unable to take a position on costs.

64. The Committee reviewed and accepted an estimated statement of costs in the aggregate amount of $35,901.35 and ordered that payment would be due in full on or before December 31, 2022.

65. Notice shall be given to the profession. It is noted that a Notice to the Profession of this disbarment was published on April 26, 2021, after the Committee's oral decision on sanction.

66. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Liakopoulos will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)). The Dr. RH Letter will not be made available for public inspection.

Dated at Calgary, Alberta, July 19, 2021.

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Cal Johnson, QC - Chair

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Grace Brittain

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Ken Warren, QC