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 JOSEPH AMANTEA
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Deanna Steblyk, QC – Chair and Bencher
Linda Maj – Adjudicator
Carsten Jensen, QC – Former President

Appearances
Miriam Staav – Counsel for the Law Society of Alberta (LSA)
Norm Machida, QC – Counsel for Joseph Amantea

Hearing Date
May 13, 2020

Hearing Location
Via Skype

HEARING COMMITTEE REPORT

Overview

1. Joseph Amantea is a lawyer practicing in Calgary, primarily in the areas of real estate development and residential and commercial real estate. By way of a Statement of Admitted Facts and Admissions of Guilt dated February 28, 2020 (Statement), he admitted his guilt in respect of two citations referred to a hearing by a panel of the Conduct Committee on March 19, 2019 (Admitted Citations). The Admitted Citations arose from Mr. Amantea's representation of his long-time client, P.S., from approximately 2010 through 2012.

2. On May 13, 2020, this Hearing Committee (Committee) convened a hearing into the conduct of Mr. Amantea, based on the Admitted Citations. The Admitted Citations are:

    1) It is alleged Joseph B. Amantea signed and swore affidavits of execution attesting that he had witnessed an individual sign documents when he had not witnessed the individual sign the documents and that such conduct is deserving of sanction.
    2) It is alleged Joseph B. Amantea acted in a conflict of interest and that such conduct is deserving of sanction.

3. The Committee accepted the Statement as being in the appropriate form.

4. The parties made a joint submission on sanction and costs. The only issue in contention between them was whether or not a referral should be made to the Minister of Justice and Solicitor General (Solicitor General). The Committee heard argument on that issue from both parties.

5. After reviewing the Statement and the other exhibits, and after hearing the arguments of counsel for the LSA and counsel for Mr. Amantea, on May 13, 2020, the Committee found Mr. Amantea guilty of conduct deserving of sanction on the Admitted Citations, pursuant to section 71 of the *Legal Profession Act* (*Act*).

6. The Committee also found that, based on the facts of this case, the appropriate sanction was, as jointly recommended by the parties, a one-month suspension. In accordance with section 72 of the *Act*, the Committee ordered that Mr. Amantea be suspended for one month commencing May 16, 2020.

7. In addition, pursuant to subsection 72(2) of the *Act*, the Committee ordered Mr. Amantea to pay the LSA $10,132.50 in costs within 60 days of May 13, 2020.

8. The Committee gave a brief oral ruling at the conclusion of the hearing with respect to the finding of guilt, the suspension, and costs, with reasons to follow. This report includes our reasons. As we reserved our decision on the issue of the referral to the Solicitor General, this report also includes that decision and our reasons.

Preliminary Matters

9. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. Accordingly, a public hearing into Mr. Amantea's conduct proceeded.

10. There were no other preliminary matters raised.

Statement of Admitted Facts and Admissions of Guilt

Facts

11. The Statement set out the following background facts.

12. Mr. Amantea was admitted to the bar in 1978. He has worked at the same law firm in Calgary ever since. He has no discipline record with the LSA.

13. Mr. Amantea has acted for P.S. and his companies on numerous occasions since approximately 1995 or 1996.

14. In March 2008, Mr. Amantea incorporated a company for P.S. and N.R. (Company). P.S. and N.R. were the directors and 50% shareholders of the Company.

15. In November 2009, the Company was sued by a construction company (Contractors) on a builder's lien relating to development land (Land) in Alberta (Development Action). While another lawyer initially acted for the Company on the Development Action, that lawyer failed to file a Statement of Defense and a default judgment was entered against the Company. P.S. subsequently asked Mr. Amantea to take over representation of the Company in the Development Action.

16. To avoid foreclosure of the Land, Mr. Amantea negotiated an agreement with the Contractors. The Company was to pay the Contractors $50,000 and provide them with a mortgage on title for approximately $112,000 (Mortgage), in exchange for which the Contractors would discharge the builder's lien.

17. Mr. Amantea paid the Contractors $50,000 from his own funds without the consent of the Company, P.S., or N.R.

18. The Company did not redeem the Mortgage when it became due, so the Contractors commenced foreclosure proceedings and obtained a six-month redemption order.

19. Mr. Amantea spoke to N.R. for the first time in March 2011, when N.R. telephoned Mr. Amantea to discuss the foreclosure proceedings. They had a number of other communications regarding the foreclosure proceedings after that date. Mr. Amantea repeatedly assured N.R. that the Land would not be lost to foreclosure.

20. In approximately October 2011, N.R. raised concerns with Mr. Amantea with respect to a number of properties he and P.S. had purchased together in the United States (U.S. Properties). N.R. complained about the lack of information he received from P.S., and the fact that his relationship with P.S. was deteriorating. Mr. Amantea agreed to mediate between the two and help them to dissociate their business relationship.

21. Mr. Amantea had three meetings with P.S. during October, November, and December 2011. P.S. asked Mr. Amantea to witness and notarize 181 quit claims (Quit Claims) to transfer ownership of some of the U.S. Properties from himself, his corporations, and his daughter, to N.R.. P.S. asked if he could have his daughter sign the documents in advance, after which he would bring them to Mr. Amantea for witnessing along with the Quit Claims P.S. was required to sign. Mr. Amantea agreed to that approach as a favour to P.S..

22. Mr. Amantea witnessed P.S.'s signature on 171 of the Quit Claims, but did not actually see or witness P.S.'s daughter execute the 10 Quit Claims related to the U.S. Properties held in her name (Impugned Quit Claims). Nonetheless, he completed the affidavits of execution that stated he had witnessed her signature.

23. In early 2012, Mr. Amantea personally paid $110,000 to the Contractors in satisfaction of the Mortgage, and to prevent the sale of the Land under foreclosure. Later, P.S. paid the remainder of the Company's debt under the default judgment.

24. In February 2012, N.R. commenced an action against Mr. Amantea and others in relation to the Quit Claims. P.S.'s daughter was examined for discovery in this action, and gave evidence that she had not signed the Impugned Quit Claims purported to have been signed by her.

25. As a result of P.S.'s daughter's evidence, Mr. Amantea reported himself to the LSA in July 2017. N.R. submitted a complaint to the LSA in March 2018, which included his concern that Mr. Amantea had falsely sworn and notarized the Impugned Quit Claims.

Citation 1

26. Mr. Amantea admitted his guilt in failing to witness P.S.'s daughter's signature on the Impugned Quit Claims and then falsely swearing and signing the corresponding affidavits of execution attesting that he had personally witnessed them.

27. Mr. Amantea admitted that this conduct was "conduct deserving of sanction" as defined under section 49 of the *Act*.

Citation 2

28. Mr. Amantea admitted that he never advised N.R. that he was not N.R.'s lawyer. Mr. Amantea also admitted that he never advised either P.S. or N.R. to retain an independent lawyer or to get independent legal advice. N.R. ultimately obtained his own lawyer.

29. Mr. Amantea admitted that he paid $160,000 of his own funds on behalf of the Company. He has not been repaid by P.S., N.R., or the Company.

30. Specifically, Mr. Amantea admitted that he acted in a conflict of interest, the particulars of which were:

    1) in late 2011, he acted in a conflict of interest by assisting N.R. while simultaneously representing P.S. and the Company, contrary to Chapter 6, Rule 1 of the *Code of Professional Conduct* (June 6, 2009) (*Code (2009)*) and Chapter 2.04(1) of the *Code of Conduct* (November 1, 2011 (*Code (2011)*); and

    2) in or about 2010-2012, he acted in a conflict of interest by representing the Company while also granting loans to the Company without the Company's consent, contrary to Chapter 6, Rule 9 of the *Code (2009)* and Chapter 2.04(11) of the *Code (2011)*.

31. Mr. Amantea admitted that this conduct was also "conduct deserving of sanction" as defined under section 49 of the *Act*.

Findings

32. According to paragraph 18 of the LSA Hearing Guide, February 2013 (Guide), before accepting an admission of guilt, a hearing committee may consider whether:

    1) the admission was made voluntarily and free of undue coercion;
    2) the lawyer has unequivocally admitted guilt to the essential elements of the citations;
    3) the lawyer understands the nature and consequences of the admission; and
    4) the lawyer understands that the hearing committee is not bound by any submission advanced jointly by the lawyer and the LSA.

33. The Committee considered the above and found the Statement to be in an acceptable form pursuant to section 60 of the *Act*. It was entered into the hearing record as an exhibit.

34. Since the admissions in the Statement were accepted, each admission was deemed to be a finding of this Committee that Mr. Amantea's conduct was conduct deserving of sanction.

Joint Submission as to Sanction

35. As mentioned, the parties made a joint submission on sanction, and agreed that the appropriate sanction was a one-month suspension. They also agreed that Mr. Amantea should be ordered to pay costs in the amount of $10,132.50.

36. The hearing committee in *Law Society of Alberta v. Llewellyn* (2018 ABLS 11) observed as follows with respect to joint submissions on sanction (at para. 10):

> The Committee is not bound by joint submissions on sanctions. However, the Committee is required to give serious consideration to jointly tendered submissions, and accept, unless they are found to be unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting the joint submissions.

37. LSA counsel argued that pursuant to the decision of the Supreme Court of Canada in *R. v. Anthony-Cook* (2016 SCC 43), a joint submission should be accepted unless the proposed sanction "would bring the administration of justice into disrepute or is otherwise contrary to the public interest" (at para. 32). We agree with the *Llewellyn* hearing committee's observation that, "[t]his is a high standard" (at para. 11).

38. As pointed out by LSA counsel, according to paragraph 57 of Guide, the "fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession". The Guide sets out a number of factors that should be taken into account when determining sanction, including, at paragraph 69, the goals of specific and general deterrence and denunciation of the misconduct. LSA counsel submitted that the orders proposed here would satisfy those goals, and were appropriate in view of the aggravating and mitigating circumstances of the case.

39. LSA counsel went on to argue that the aggravating circumstances here are the nature, gravity, and consequences of Mr. Amantea's misconduct, which in part precipitated N.R.'s civil action with respect to the Quit Claims. However, she also noted that there are a number of mitigating circumstances, including that Mr. Amantea:

1) did not personally benefit from his misconduct;
2) has no prior disciplinary record after more than 40 years at the bar;
3) reported himself to the LSA (albeit only after P.S.'s daughter gave her examination for discovery evidence);
4) has cooperated with the LSA and admitted his guilt; and
5) provided several letters of reference attesting to his integrity, including one written by his long-time law partner – all of which suggested this was an isolated error in judgment.

40. As to the necessary proportionality of the recommended sanction, LSA counsel directed us to two prior decisions with comparable facts: *Law Society of Alberta v. Gish* ([2006] LSDD No. 132) and *Law Society of Alberta v. Pearson* (2011 ABLS 17). She argued that these decisions demonstrated that the recommended sanction fell within the range of reasonable sanctions in similar circumstances.

41. *Gish* involved one citation, with respect to signing a false affidavit of execution. While the lawyer had sworn that she witnessed a married couple sign mortgage refinancing documents, she had not actually been present when the documents were ostensibly executed by the husband. Ultimately, it turned out that the husband's signature had been forged by the wife. Although the hearing committee noted that such conduct might normally attract a suspension, it did not find a suspension necessary in the particular circumstances of the case. Instead, it imposed a $10,000 fine and ordered payment of costs.

42. In *Pearson*, the hearing committee found that two of four citations admitted by the member arose from a conflict of interest due to her representation of both a developer and the development investors. The lawyer was suspended for four months and ordered to pay costs.

43. Mr. Machida, counsel for Mr. Amantea, fully supported the jointly proposed sanction.

Analysis and Decision on Sanction

44. Based on the submissions of counsel, the deference to be given to a jointly proposed sanction, the public interest, and the principles and factors to be addressed in sanctioning, the Committee accepted the parties' proposal. This was clearly an isolated incident in Mr. Amantea's long legal career, from which he gained no personal benefit. Further, we were satisfied that the proposal fell within the general range of sanctions imposed in similar cases such as *Gish* and *Pearson*, as well as in the other similar cases included in the parties' Joint Book of Authorities.

45. The Committee therefore ordered that in accordance with section 72 of the *Act*, Mr. Amantea be suspended for one month, commencing May 16, 2020. We also ordered $10,132.50 in costs as proposed by the parties, to be paid by Mr. Amantea within 60 days of May 13, 2020.

Referral to the Minister of Justice and Solicitor General

46. As mentioned, the remaining issue for the Committee's determination was whether or not to refer this matter to the Solicitor General pursuant to subsection 78(6) of the *Act*. The parties took opposing positions.

Submissions – LSA

47. Counsel for the LSA argued that the referral should be made. She noted that subsection 78(6) states as follows:

> Notwithstanding subsections (1) to (4), if following a hearing under this Division, the Hearing Committee or the panel of Benchers is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Hearing Committee or the panel, as the case may be, shall forthwith direct the Executive Director to send a copy of the hearing record to the Minister of Justice and Solicitor General. [our emphasis]

48. LSA counsel argued that the issue turns on whether or not "there are reasonable and probable grounds to believe" that Mr. Amantea committed a criminal offense. She referred to section 138 of the *Criminal Code of Canada* (*Criminal Code*), which states in part:

> Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who
>
> (a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,

. . .

49. In LSA counsel's submission, there are reasonable and probable grounds to believe that Mr. Amantea contravened subsection 138(a) of the *Criminal Code* because he intentionally signed a writing that purported to have been sworn or declared before him, knowing that it had not been sworn or declared before him.

50. However, LSA counsel acknowledged that past LSA hearing committees in analogous circumstances have differed as to whether a referral to the Solicitor General should be made. In *Gish*, the hearing committee directed the referral and stated as follows (at para. 25):

> The Panel was of the opinion that there are reasonable and probable grounds to believe that the Member has committed a criminal offence and accordingly shall direct the Secretary of the Law Society to send a copy of the hearing record to the Attorney General pursuant to Section 78(4) of the *Legal Profession Act*. The Panel did note that the test for swearing a false affidavit under the Criminal Code was that the affidavit must be false with the intention to deceive. The Panel was unclear as to the test in the Criminal Code of the formulation of an intent to deceive. While the Panel believed the Member when she stated under oath that she believed that it was the husband's signature on the documentation, nonetheless she clearly took the affidavit that was false and that affidavit would deceive the mortgage lender and the Land Titles Office in concluding that the husband had in fact appeared before the Member. As the provision of Section 78(4) of the *Legal Profession Act* is mandatory, the Panel concluded that the referral to the Attorney General should be made. [our emphasis]

51. LSA counsel argued that the circumstances in this matter are the same, as anyone reviewing the Impugned Quit Claims would have been deceived and believed that they had been duly executed before Mr. Amantea.

52. By way of contrast, LSA counsel also referred to *Law Society of Alberta v. Coley* ([2008] LSDD No. 162). In that case, the lawyer had signed an affidavit of execution after calling his client to confirm that the client had signed the agreement in question, even though he had not actually witnessed the client do so. The hearing committee did not direct a referral to the Solicitor General, but neither did it include any analysis of the issue in its decision, or provide an explanation as to why the referral was not made.

53. While therefore acknowledging that there are past decisions of LSA hearing committees involving false affidavits of execution in which no referral was made, LSA counsel argued that a plain reading of subsection 138(a) of the *Criminal Code* and the mandatory language in subsection 78(6) of the *Act* indicate that it is necessary in this case.

Submissions – Mr. Amantea

54. Mr. Machida stressed that the conduct at issue here was a matter of competence and not integrity. He argued that Mr. Amantea had no intent to deceive – and therefore, that there was no *mens rea* – as he honestly believed that the Impugned Quit Claims had been executed by P.S.'s daughter. He also argued that the language in subsection 78(6) of the *Act* is not mandatory, as the hearing committee or panel has to be satisfied that there are reasonable and probable grounds to believe a criminal offense was committed, beyond a reasonable doubt.

55. Mr. Machida pointed to the decision in *R. v. Chow* (1978 CanLII 1809), in which the Saskatchewan Court of Appeal had found that " . . . the offence created by s. 126(a) [now subsection 138(a) of the *Criminal Code*] is not one of strict liability, but is one in which it is necessary to establish *mens rea* in order to found a conviction" (at para. 2). He argued that the facts in that case were similar to the facts in this matter, and that the necessary *mens rea* had not been established. Of the 181 Quit Claims he was asked to witness, Mr. Amantea executed 171 of them properly. Counsel therefore characterized his failure to do the same with respect to the Impugned Quit Claims as a momentary lapse in judgment. Mr. Amantea should not have agreed to let P.S. obtain his daughter's signature in advance, but he had no reason at the time to believe that P.S. would not actually get his daughter to sign them. He honestly believed that the Impugned Quit Claims had been executed by her and had no reason to believe otherwise until he heard her examination for discovery evidence. When he learned the truth, he reported himself to the LSA.

56. With respect to the decision in *Gish*, Mr. Machida argued that the hearing committee interpreted the law incorrectly by focusing on whether the lawyer had actually witnessed the execution of the document rather than whether she honestly believed, like Mr. Amantea, that the signature was authentic.

57. Mr. Machida then pointed to a number of other cases involving lawyers who witnessed documents and signed affidavits of execution despite not having actually done so, and in which no referral to the Solicitor General was directed.

58. In *Law Society of Alberta v. Bittner* (2002 LSDD No. 52), the hearing committee found that the lawyer knew he was making a false statement, but believed the signatures on the documents were genuine. Regardless, the hearing committee stated that it "did not find any reasonable grounds to believe that a referral to the Attorney General was necessary" (at para. 24). It did not analyze the issue or explain why it had reached that conclusion.

59. In *Law Society of Alberta v. Juneja* (2011 ABLS 1), the lawyer was found guilty of a number of citations, including one that alleged he swore false affidavits of execution and commissioned an affidavit that bore a false signature. Again, the hearing committee stated, "there will be no referral to the Attorney General" (at para. 8), but did not analyze the issue or explain why it had made that decision.

60. In *Law Society of Alberta v. Souster* (2016 ABLS 1), the lawyer was found to have knowingly signed false affidavits of execution indicating that he had witnessed certain signatures when he had not, even though he had thought the signatures were genuine. Mr. Machida focused on paragraph 50 from the Statement of Admitted Facts and Admission of Guilt appended to the hearing committee's decision:

> Mr. Souster signed as a witness to the purchaser's signatures on the transaction documents and swore Affidavit of Executions [sic] to that effect, despite the purchasers' statements that he was not present when the documents were signed. Mr. Souster stated that his regular practice was to meet with clients but there were times he did not meet with them. Without a specific recollection of the signing of the transaction documents nor any note to his file indicating that he did he is not in a position to dispute that he signed documents as a witness and swore to having witnessed signatures without having been present, but did not do so knowingly. [our emphasis]

61. Mr. Machida argued that the facts in the case were the same as the facts here: like Mr. Amantea, Mr. Souster did not know that the ostensible signatory had not actually signed the documents, even though he did know that he had not been present to witness it. Despite this, the hearing committee did not direct a referral to the Solicitor General (see para. 50), but there was no discussion of the issue and no reasons given as to why the hearing committee declined to do so.

62. Mr. Machida also referred to two decisions from Ontario. In *Law Society of Upper Canada v. Iglar* (2004 ONLSAP 0007), the lawyer had witnessed the false execution of a deed and three mortgages knowing them to be false, swore four affidavits as a witness knowing them to be false, and commissioned eight affidavits, knowing them to be false. Although he commissioned affidavits knowing that his own wife had signed the documents at issue and not the individuals purported, the appeal panel made no reference to a referral for conduct in breach of the *Criminal Code*, but stated, "[t]he member's conduct was not an act of dishonesty amounting to a criminal act" (at para. 55).

63. In *Law Society of Ontario v. Cusack* (2018 ONLSTH 170), the hearing committee found the lawyer guilty of various misconduct around the execution of mortgage documents, including that he signed an acknowledgement and direction as a witness for the signatures of two clients when he had not actually witnessed one of the clients sign. Despite the fact that the mortgage was ultimately found to be fraudulent, the committee found that Cusack had had no intent to deceive (at para. 22) and made no mention of conduct in breach of the *Criminal Code*.

64. In conclusion, Mr. Machida argued that the appropriate orders are a one-month suspension and payment of costs. In his submission, these orders are sufficient to address the misconduct and protect the public interest, and no further action is necessary.

Reply Submissions – LSA

65. By way of reply, counsel for the LSA emphasized two points. First, she noted that past decisions of other LSA hearing committees and panels are not binding on this Committee. However, she also noted that in the past LSA decisions in which no referral to the Solicitor General was directed, *Gish* is the only one that expressly considered the issue and gave reasons. She disputed the applicability of any decisions of the law society in Ontario because of the difference in the relevant legislation.

66. Second, she submitted that the crux of the *mens rea* issue here is not whether Mr. Amantea honestly believed that P.S.'s daughter signed the Impugned Quit Claims – it is the fact that he knew he did not see her sign them and intentionally, knowingly swore false affidavits stating that he had. Earlier in her submissions, she had distinguished *Chow* on that basis: Mr. Chow had a mistaken but honest belief that the procedure he had followed was acceptable. By contrast, Mr. Amantea understood what was required before attesting to having seen P.S.'s daughter execute the Impugned Quit Claims, but proceeded to make that attestation regardless.

Analysis and Decision on Referral to Solicitor General

67. As cited by LSA counsel, the *2019 Annotated Tremeear's Criminal Code* (D. Watt and M. Fuerst, Toronto: Thomson Reuters, 2018) (*Tremeear's*) contains the following commentary with respect to subsection 138(a) of the *Criminal Code* (at p. 268):

> Under s. 138(a), the *external circumstances* require that D sign a writing that purports to be an affidavit or statutory declaration sworn or declared before D. The writing must either *not* have been so sworn or declared, that is to say, before D, or D must have *no* authority to administer the oath or declaration. The mental element requires proof of an intention to cause the external circumstances of the offence including, where applicable, specific knowledge of the lack of authority to administer the oath or declaration. [our emphasis]

68. Considering this authority in the context of the circumstances before us, the Hearing Committee is of the view that an accused has the necessary *mens rea* where he has the intention to "sign a writing that purports to be an affidavit or statutory declaration sworn or declared before" him when that writing was "*not* … so sworn or declared … before" him.

69. The only case cited in *Tremeear's* with respect to s. 138(a) is *Chow*. The authors summarized the decision as follows:

> Falsely swearing an affidavit is not an offence of strict liability. P must establish *mens rea* to found a conviction. An honest, but mistaken, belief that sufficient

> formalities to constitute swearing of an affidavit have been met to justify the completion of the jurat is a defence to a charge under s. 138(a).

70. However, a close reading of *Chow* makes it clear that the circumstances that founded the acquittal in that case are quite different than what occurred in this case (at paras. 4-7):

> The affidavit in question was that of Gordon Francis, signed by him as the witness to the transferor's signature in the transfer of land. Francis had been present when the transfer was signed by the transferor, had seen him sign the transfer, had signed as a witness and then signed the affidavit. The document was then returned to Chow.
>
> A short time later Chow saw Francis. He asked him if he had been present when the transfer was signed by the transferor, if he had seen the transferor so sign and if, following that, he had signed the transfer as a witness and had signed the affidavit swearing to these facts. To all of these questions Francis answered yes. At the time, Chow did not have the transfer with him. Following this interview however, Chow returned to his office and signed the jurat on the affidavit.
>
> In so doing, he said he believed the circumstances were such as to justify his conclusion that, in fact, Francis had sworn the affidavit and he could then properly complete the jurat.
>
> I think it is clear that while Chow was wrong [in] concluding, in fact, that the interview with Francis was sufficient to constitute the ceremony of swearing so as to permit him to sign the jurat, he honestly believed that he could properly consider that Francis swore the affidavit, thus justifying his completion of the jurat. Such an honest belief, in my opinion, even though wrong, negatives that state of mind that could be construed as the mens rea required by the section of the Criminal Code to found a conviction, and consequently the learned trial judge erred in law in finding him guilty, and should have dismissed the information.

71. This is not what occurred in this case. Although his honest belief is not specifically set out in the Statement, we are prepared to accept that Mr. Amantea honestly believed P.S.'s daughter had executed the Impugned Quit Claims, and that he had no reason to believe she had not done so. However, unlike Mr. Chow, there is no evidence that Mr. Amantea took any steps to verify with her directly the authenticity of the signatures or the circumstances of execution, or that he honestly thought his actions were "sufficient to constitute the ceremony of swearing".

72. We are also prepared to accept that Mr. Amantea had no intent to deceive in that he had no intent to knowingly authenticate a false signature. However, we find that despite this, the facts support the necessary inference that Mr. Amantea had the intent to deceive in that he knowingly completed affidavits of execution attesting to the fact that he had seen P.S.'s daughter sign the Impugned Quit Claims when he was fully aware that he had not seen her sign them.

73. Further, Mr. Amantea must have intended that his false affidavits be relied on by others so that the Impugned Quit Claims could be put to their intended use. If he did not intend for the Impugned Quit Claims to be relied on for that purpose, there would have been no point in witnessing them and executing the corresponding affidavits of execution at all. In other words, the Committee finds that the issue is not whether Mr. Amantea believed that P.S.'s daughter signed the Impugned Quit Claims, the issue is that he knowingly swore false affidavits of execution that would deceive anyone who reviewed them into believing that he had personally witnessed her do so.

74. Therefore, while we are aware that we are not bound by the decision in *Gish*, we find that these circumstances are directly analogous to those in that case. We cite the relevant findings from that decision again here for ease of reference:

> The Panel did note that the test for swearing a false affidavit under the Criminal Code was that the affidavit must be false with the intention to deceive. . . While the Panel believed the Member when she stated under oath that she believed that it was the husband's signature on the documentation, nonetheless she clearly took the affidavit that was false and that affidavit would deceive the mortgage lender and the Land Titles Office in concluding that the husband had in fact appeared before the Member.

75. As a result, the Committee is of the opinion, like the committee in *Gish*, that based on the wording of subsection 138(a) of the *Criminal Code*, there are reasonable and probable grounds to believe that Mr. Amantea has committed a criminal offence by contravening that subsection. We find the reasoning in *Gish* persuasive and arrive at the same conclusion as that hearing committee: based on a careful review of the wording of subsection 78(6) of the *Act*, a referral is mandatory in this situation and must be made.

76. The Committee's decision is based upon its conclusion that the *Act* permits us no discretion in these circumstances. We are mindful of the past LSA decisions cited to us in which no referral to the Solicitor General was made despite the factual similarities to this matter. It is unfortunate that those panels gave no reasons for declining to make the referral, as we have no way of knowing the basis on which they arrived at their conclusions on the point.

77. The Hearing Committee was unanimous in its view that if the *Act* gave us any discretion in the determination (such as that given to the Conduct Committee in subsection 78(5) with the use of the word "may" instead of the word "shall" as in subsection 78(6)), we would not direct a referral in the circumstances of this case. While recognizing the important objectives of the referral process, which include protection of the public, we believe that in these circumstances the orders imposed are adequate. We are of the opinion that an isolated lapse in judgment by a senior member of the bar with no disciplinary history does not warrant any further action.

Concluding Matters

78. On May 13, 2020, the Committee ordered pursuant to s. 72 of the *Act* that Mr. Amantea:

    1) is suspended for one month commencing May 16, 2020; and
    2) must pay $10,132.50 in costs to the LSA within 60 days of May 13, 2020.

79. Notice to the Profession pursuant to section 85 of the *Act* is required in the circumstances of a suspension, and that Notice was issued on May 14, 2020.

80. With reluctance for the reasons given, the Committee directs the Executive Director to send a copy of the hearing record to the Minister of Justice and Solicitor General.

81. 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 Mr. Amantea will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, June 8, 2020.

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Deanna Steblyk, QC

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Linda Maj

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Carsten Jensen, QC