

**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 AJAY JUNEJA
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Bud Melnyk, Q.C. – Chair
Lou Cusano, Q.C. – Bencher
Edith Kloberdanz – Public Adjudicator

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Simon Renouf, QC – Counsel for Ajay Juneja

Hearing Dates

July 26, 27, 28, 29, 2021 and September 20 and 21, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Mr. Ajay Juneja was admitted as a member of the LSA on October 1, 2004. At all times material to the events giving rise to the complaints Mr. Juneja's status was "active/practising".
2. On July 26, 2021 the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Juneja arising from two complaints by the LSA and a total of six citations as follows:

Complaint #1: CO20181489

- 1) It is alleged that Ajay Juneja failed to comply with an undertaking, in particular undertaking #3 from Undertakings to the Law Society of Alberta dated March 3, 2015;
- 2) It is alleged that Ajay Juneja misled opposing counsel, N.T., as to his authorization to act on a matter;

- 3) It is alleged that Ajay Juneja failed to comply with an undertaking, in particular undertaking #9 from Undertakings to the Law Society of Alberta dated March 3, 2015;
- 4) It is alleged that Ajay Juneja failed to be candid with the Law Society.

Complaint #2: CO20181994

- 5) It is alleged that Ajay Juneja conducted himself in such a manner that brought discredit to the profession;
 - 6) It is alleged that Ajay Juneja failed to be candid with the Law Society.
3. At the outset of the hearing and by consent, counsel for the parties submitted a Statement of Agreed Facts and Exhibits.
 4. The Committee, after reviewing all of the evidence and exhibits, hearing the testimony of witnesses for the LSA and Mr. Juneja, and considering the arguments of the parties, for the reasons set out below, finds Mr. Juneja guilty of conduct deserving of sanction on citations 1, 2, 3, 4, 5 and 6.
 5. The appropriate sanction for this conduct, as well as any order for costs and any other matters, will be determined at the sanctioning phase of the hearing.

Preliminary Matters

6. Jurisdiction was established through Exhibits 1 to 4. The parties had no objection to the constitution of the Committee or its jurisdiction.
7. The hearing proceeded as a public hearing.
8. The Committee directed that the names of individual complainants and witnesses be anonymized in this Hearing Report and redacted in any other materials prior to the materials being made public.
9. There was a concern about the confidentiality and sensitivity of certain medical information. In accordance with the LSA's Publication and Redaction Guideline for Adjudicators, to the extent possible, the Committee will avoid referencing specific medical diagnoses, conditions or information in this Hearing Report. The Committee orders that any such information be redacted in this Hearing Report, transcripts or exhibits before they are made available publicly.
10. An Agreed Exhibit Binder was submitted by the parties at the start of the hearing, and the documents therein were entered into the record. There were 35 exhibits in the Agreed Exhibit Binder, including the jurisdictional exhibits. Over the course of the hearing a further 28 exhibits were entered for a total 63 exhibits.

Agreed Statement of Facts/Background

11. Mr. Juneja was admitted to the Alberta Bar in 2004 and practiced and resided in Edmonton, Alberta. Throughout the relevant periods of time Mr. Juneja was employed by a lawyer, JC, with the J law firm.
12. In 2011 Mr. Juneja was suspended but applied in 2014 to be reinstated to active status. On February 18, 2015 a Practice Review Panel issued a Decision of Practice Review Reinstatement Panel. That Decision required that Mr. Juneja sign written undertakings. Mr. Juneja signed those undertakings with the LSA on March 3, 2015, which included undertakings 3 and 9:
 3. (Practice Restrictions) Restrict my practice to criminal and personal injury law subject to reapplication to the Practice Review Committee.
 9. (Abstention) Abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs are prescribed by a physician who is fully aware of my substance dependence and feels that their use is necessary.
13. The March 3, 2015 Undertakings contained the following statement:

I understand that I am bound by these undertakings as a condition of my reinstatement to the Law Society of Alberta, and that they shall remain in effect (and I will continue to be bound by them), until I am advised in writing that they have been varied or removed.
14. On April 7, 2015 a Reinstatement Panel of the Credentials and Education Committee approved the reinstatement application of Mr. Juneja subject to two conditions: (1) that his law practice be restricted to criminal and personal injury law and (2) that he return to the Credentials and Education Committee to vary these conditions.

Preliminary Legal Issues

15. During the course of this proceeding counsel for the LSA sought to enter as exhibits contemporaneously-made witness notes. Counsel for Mr. Juneja objected. It is certainly the case that these notes were relevant and material. However, the Committee was not prepared to allow the notes to be entered as exhibits for the following reasons:
 - (a) While the notes were in all instances made contemporaneously by the witnesses shortly after the events, each of the witnesses had a fair and strong recollection of the events.
 - (b) Allowing the notes in such a situation would only act to bolster the evidence of the witness, which evidence the witness would otherwise be able to provide orally. Expressed another way, the Committee felt that the probative value was not outweighed by any prejudicial effect.
 - (c) While the notes were not entered as exhibits, the witnesses were nonetheless allowed an opportunity to review their respective notes should they have needed to refresh their memories.

Citation 1: Breach of Practice Restrictions

Particulars: Citation 1

16. This citation alleges that Mr. Juneja failed to comply with an undertaking to the LSA dated March 3, 2015, namely to restrict his practice to criminal and personal injury law. The alleged particulars are as follows:
- (a) Between May 21, 2018 and June 7, 2018 Mr. Juneja is alleged to have acted for the Defendant in Court of Queen's Bench action [...], which was neither a criminal or personal injury matter; and
 - (b) Mr. Juneja acted for the Defendant between June 25, 2018 and July 24, 2018 in Court of Queen's Bench action [...], which was neither a criminal or personal injury matter.

Evidence: Citation 1

Evidence of DM

17. DM is counsel with the LSA Practice Management department. DM has had conduct of Mr. Juneja's practice management file since 2018 and had worked with Mr. Juneja on two separate referrals. DM gave evidence regarding varying practice conditions and undertakings as follows:
- (a) DM confirmed that Mr. Juneja was still bound by the practice restrictions and undertakings and that DM had no authority to modify those restrictions or undertakings. DM referred to the Decision of Practice Review Reinstatement Panel dated February 18, 2015. This Decision confirmed that Mr. Juneja was obligated to provide written undertakings to the Manager, Practice Review, which included the practice restrictions noted above.
 - (b) In order for Mr. Juneja to modify or vary any of the undertakings he would have to make the necessary application to either the Practice Review Committee or the Manager, Practice Review. When Mr. Juneja sought reinstatement in 2014, he was advised by the LSA that any modifications to his practice would have to be managed through the Practice Review Committee.
 - (c) Mr. Juneja did make a request in 2016 to modify his practice restrictions and the Practice Review Committee determined that Mr. Juneja could operate a professional corporation and could further practice administrative law provided he attended an approved administrative law course.
 - (d) DM also gave evidence regarding the reporting requirements of Mr. Juneja, which were initially monthly and then varied to quarterly in 2016. DM made reference to six written and signed self-reports from Mr. Juneja to the Manager, Practice Review, dated December 15, 2016, March 15, 2017, July 9, 2017, September 15, 2017, December 15, 2017 and March 15, 2018. Each of these self-reports asked the following question: "Practice Restrictions: Restrict my practice to criminal and personal injury law, subject to reapplication to the

practice review committee.” In each report Mr. Juneja replied: “I only practice in the areas of Personal Injury and Criminal Law.”

Evidence of KH

18. The LSA also called KH, who was with the Practice Management department and had conduct of Mr. Juneja’s file prior to DM from about 2016 to 2018. The evidence of KH was that at no time did Mr. Juneja, or his supervising lawyer, JC, ever inform the LSA that Mr. Juneja was doing account taxations for the J law firm where Mr. Juneja worked.

Evidence of NT

19. The LSA called NT as a witness. NT was a lawyer that had been retained by another lawyer, LH. LH was formerly employed by the J law firm. When LH left the employ of the J law firm, a dispute arose over retention of client files and payment of trust monies. Following the departure of LH from the J law firm, LH commenced a claim against the J law firm for the release of certain client files (LH Litigation).
20. NT stated that at all times he dealt directly with Mr. Juneja and not with JC. In an email dated May 21, 2018 from Mr. Juneja to NT, Mr. Juneja states:

As stated therein please direct all future correspondence to this matter to my attention. In regards to your application for May 24, 2018, it needs to be rescheduled as I am not available that day, and as stated in my correspondence I will be cross-examining your client on her affidavit in advance on any such application.

21. NT also stated that all of the files claimed by LH which were to be transferred to LH were criminal files.

Evidence of LH

22. LSA called LH, a former colleague of Mr. Juneja at the J law firm, who gave evidence as follows:
 - (a) LH was a lawyer that formerly was employed as an associate with the J law firm, which was the same law firm where Mr. Juneja was employed. When LH left the employ of the J law firm, a dispute arose over retention of client files and payment of trust monies. LH commenced the LH Litigation.
 - (b) When LH left the J law firm her initial communications regarding her files were with JC, but after May 17, 2018 her communications were entirely with Mr. Juneja.
 - (c) It was Mr. Juneja who questioned and cross examined her on June 4, 2018.
 - (d) Mr. Juneja appeared in court on June 7, 2018 on behalf of JC in respect of the application by LH over the disputed client files.
 - (e) All the client files in dispute were criminal files.

- (f) Mr. Juneja had handled taxation matters in the past for the J law firm.

Evidence of NF

23. The LSA also called NF, who is a practicing lawyer. He acted for plaintiffs that were involved in a commercial dispute. This matter concerned litigation between a friend and long-time client of JC where the client, AO, had been sued by NF's client regarding a real estate deal gone awry (AO Litigation). The AO Litigation was a claim by the prospective purchasers of a condominium property seeking, among other things, the return of a deposit.
24. NF stated that he dealt with JC as the lawyer acting for the defendants, but that he also had contact with LH, who at the time was still an associate with JC. Following the departure of LH, NF gave evidence that Mr. Juneja communicated with him in respect of the AO Litigation as follows:

- (a) Mr. Juneja and NF exchanged a series of emails between June 25, 2018 and July 18, 2018 which can be summarized as follows:
- i. In the June 25, 2018 email Mr. Juneja advised NF that JC had taken conduct of the file and that all future communication should be directed to JC. That email further stated that Mr. Juneja was "attempting to facilitate communication" while JC was out of the office, and that JC wished to cross examine NF's client on his affidavit. That email also contained the following statement: "[JC] is available for all of the two-day trial times requested".
- ii. The July 2, 2018 email from Mr. Juneja to NF contained the following comments:

Further to our conversation of last Friday, please find attached draft forms of our application and affidavits in support, on behalf of [JC's] client.

In regards to your application, we will be seeking to cross-examine Mr. [X] on his latest version of events (which significantly differs from the contents of the Statement of Claim). In support of this request we will rely on the decision of Justice Veit in *J.M.S. v. J.L.*, which states that cross examination is an absolute right.

In response to your application to have the counterclaim in this action struck, we will be [JC] will be relying [sic] upon 4.34, that specifically excludes the one-year limitation period after a claim is served.

I expect Mr. [JC] will provide you with a formal offer to settle ...

If you require more time to file your Statement of Defence, no problem. I am sure Mr. [JC] will agree to any reasonable amount of time you request.

- iii. The email of July 4, 2018 from Mr. Juneja to NF advised that JC intends to examine the client of NF on his affidavit and forwarding the application of

JC's client and supporting affidavit. In this email Mr. Juneja discusses in some detail the legal position and arguments to be put forth by JC's client.

- iv. A July 9, 2018 email from Mr. Juneja to NF where Mr. Juneja states that he does not have "confirmation of my application from Friday."
- (b) All of the emails from Mr. Juneja to NF indicated by way of a footnote that Mr. Juneja's practice was restricted to personal injury and criminal law.
- (c) There were two dates set for questioning. On the first date JC was to attend, but due to his unavailability the matter was adjourned on short notice. On this second date Mr. Juneja attended and conducted the questioning. On June 7, 2018 Mr. Juneja questioned the client of NF for about one hour. According to the transcript, Mr. Juneja stated at the start of the questioning:

Okay before I start, for the purpose of the record, I'd just like to state that I'm doing the questioning on behalf of [JC] as his agent.

- (d) On March 6, 2020 NF emailed Mr. Juneja regarding settlement of the AO Litigation. NF indicated that he sent this email because he had noted in 2018 following the court applications that Mr. Juneja's emails contained a footnote regarding his practice being restricted. NF, after contacting the Practice Advisor, could not determine if the practice restriction was still in place. NF then advised the LSA on July 19, 2019 about the AO Litigation.
- (e) All the filed pleadings had indicated that JC was counsel of record.

Evidence of JC

- 25. JC was called to give evidence by Mr. Juneja. JC testified that Mr. Juneja had been employed with his firm for some five to seven years and that JC had provided an undertaking to the LSA to supervise Mr. Juneja.
- 26. Regarding the LH Litigation matter, JC's evidence was as follows:
 - (a) LH was a former employee with the J law firm.
 - (b) LH left the employ of the J law firm and a dispute arose thereafter regarding files to be transferred to LH and more particularly about client trust monies and the billing out of any files to be transferred.
 - (c) JC directed Mr. Juneja to deal with the LH Litigation matter as JC considered it to be "a self-representation of our own office" and that there was no actual third-party client, nor any remuneration. Given that Mr. Juneja had previously dealt with firm taxation matters, JC did not believe that Mr. Juneja's handling of the LH Litigation was a breach of the undertaking.
 - (d) JC also believed that Mr. Juneja was a defendant in the LH Litigation or that he was named in the pleadings. However, upon cross examination JC acknowledged that Mr. Juneja was not a party or named defendant in the LH Litigation.

- (e) JC indicated that Mr. Juneja had represented his firm in the past on account taxation matters.
- (f) JC did admit that the LH Litigation was neither a criminal nor personal injury matter.
- (g) JC agreed that Mr. Juneja conducted questioning in the AO Litigation and that Mr. Juneja endorsed an order at the behest of JC.
- (h) JC could not recall if Mr. Juneja raised any concerns with JC about his handling of the matter, but JC did indicate that if Mr. Juneja was concerned about his ability to deal with these files, then JC would simply assign the actions to another lawyer and in no way would Mr. Juneja's employment be compromised.

27. In respect of the AO Litigation JC's evidence was as follows:

- (a) JC was contacted by friend, AO, regarding a civil action where the friend had been sued. This was during a period of time when JC was involved in personal matters and out of the office. As such JC requested that Mr. Juneja assist him in this matter regarding examinations.
- (b) The other lawyer, NF, had been attempting to schedule dates for questioning, but due to JC being absent from the office, JC requested that Mr. Juneja handle all communications with NF. By way of a letter dated March 31, 2020 from JC to NF, JC requested that NF direct all further communications to the attention of JC.
- (c) JC had been trying to fit the questioning into his work schedule, but given his personal situation and otherwise busy practice, JC was unable to reach a date where he could attend for questioning.
- (d) JC wanted to deal with the AO Litigation as quickly as possible and since he could not attend at the scheduled questioning, JC instructed Mr. Juneja to attend and carry out the examination. JC felt that the questioning would not take "more than five minutes" and that Mr. Juneja was appearing as his agent only.
- (e) The party represented by NF was ultimately noted in default.
- (f) JC acknowledged that the AO Litigation was a commercial lawsuit and as such was neither criminal nor personal injury.
- (g) JC agreed that Mr. Juneja conducted questioning in the AO Litigation.

Evidence of Mr. Juneja

- 28. Mr. Juneja stated that he had been forthcoming in all his meetings with LSA staff from the Practice Review department. At all meetings the LSA had access to all files and staff.
- 29. Regarding the LH Litigation matter, Mr. Juneja provided the following evidence:
 - (a) All the files in the LH Litigation were criminal files.

- (b) Mr. Juneja initially thought he was a specific party to the LH Litigation and that his name was in the body of the Statement of Claim. However, it was pointed out to Mr. Juneja that his name appeared in an affidavit filed by LH, and Mr. Juneja believed that this made him a “party” to the action.
 - (c) Mr. Juneja believed that his representation of the J law firm in actions against his employer would not strictly be construed as doing litigation work.
 - (d) Mr. Juneja also testified that he did the “questioning on behalf of JC as his agent” [our emphasis] which was reflected on the transcript.
30. In respect of the AO Litigation, the evidence of Mr. Juneja was as follows:
- (a) JC had asked Mr. Juneja to communicate with the opposing lawyer to advise that JC had taken over conduct of the AO Litigation and to then set up dates for the examination. An examination date was initially set, but due to the passage of a few days without confirmation by the other lawyer, JC was no longer available to do the questioning. A new date was set, but then opposing counsel had to cancel. Two or three appointments had been booked to do the questioning. On the morning of the scheduled cross examination of the other party, JC could not conduct same due to personal matters, and he asked Mr. Juneja to do so as his “agent”. When Mr. Juneja indicated to JC that he was under practice restrictions, JC replied to appear as “agent”, which he had done before, and “don’t worry about it”.
 - (b) JC asked Mr. Juneja to look up a rule from the Rules of Court and JC then composed an email which Mr. Juneja sent on behalf of JC.
 - (c) At no time was AO ever the client of Mr. Juneja and the only time he met AO was to commission an affidavit.
31. Regarding both the LH Litigation and the AO Litigation, Mr. Juneja had appeared on behalf of the J law firm to do fee assessment reviews, which is a process where a lawyer’s accounts can be taxed by a review officer. While the initial review is done by a non-judge, appeals are to a Master and then a Justice, and in the case of such appeals Mr. Juneja appeared on behalf of the J law firm. All of the taxations involved a review of criminal related files. Mr. Juneja stated that he never contacted anybody at the LSA to ask if he could act on taxation matters since he believed that was within the purview of criminal law, and he believed the LSA was aware of his so acting since it was raised at a meeting with KH. The view of Mr. Juneja was that these taxation matters were akin to his acting in either or both of the LH Litigation and AO Litigation matters.

Analysis and Decision: Citation 1

32. The following summarizes Mr. Juneja’s position regarding citation 1:
- (a) In respect of both the LH Litigation and AO Litigation matters, Mr. Juneja was instructed by his supervising lawyer, JC, to deal with these matters. As such, Mr. Juneja relied on the advice of his employer and supervisor, JC, in determining that acting for the firm did not run afoul of his practice restrictions.

- (b) The LH Litigation was not viewed as a civil action since it involved the representation of the J law firm and not a third-party client.
- (c) Mr. Juneja had appeared on behalf of the J law firm to do fee assessment reviews involving criminal files, which by analogy would be no different than a situation such as the LH Litigation where Mr. Juneja acted for the J law firm.
- (d) The LH Litigation disputed files were all criminal files.
- (e) Regarding the AO Litigation, Mr. Juneja was only an “agent” of JC for the purposes of the questioning.
- (f) Furthermore, the AO Litigation emails of July 2, 2018 from Mr. Juneja to NF contained four specific references by Mr. Juneja that JC was the lawyer handling the file and was the lawyer making all decisions regarding the AO Litigation. In the June 25, 2018 email Mr. Juneja indicated that JC had assumed conduct of the matter, that all future correspondence should be directed to JC, that Mr. Juneja was “attempting to facilitate communication” while JC was out of the office, and that JC wished to cross examine NF’s client on his affidavit. That email also contained the following statement: “Mr. [JC] is available for all of the two-day trial times requested.”
- (g) All of the filed pleadings in the AO Litigation listed JC as counsel.
- (h) In an email dated July 2, 2018 from Mr. Juneja to NF, Mr. Juneja makes four references to JC:
 - i. Further to our conversation of last Friday, please find attached draft forms of our application and affidavits in support, on behalf of [JC].
 - ii. In response to your application to have the counterclaim in this action struck, we will be [JC] relying upon 4.34, that specifically excludes the one-year limitation period after a claim is served.
 - iii. If you require time to file your Statement of Defence, no problem. I am sure [JC] will agree to any reasonable amount of time you request.
 - iv. I expect [JC] will provide you with a formal offer to settle on Wednesday with support for this offer.
- (i) The affidavit filed on July 9, 2018 lists the address for service and contact person as JC, though the Application filed on that same date provides “attn: Ajay Juneja”.
- (j) That the AO Litigation questioning was scheduled on short notice and JC was going to conduct that questioning. However, due to the short notice period that questioning had to be re-scheduled for a later date the following week. JC was not available for this rescheduled date and thus Mr. Juneja appeared.

Analysis

33. There is no dispute that Mr. Juneja was subject to a practice restriction that had been imposed on him on February 18, 2015 by a Practice Review Committee. In furtherance of this decision, Mr. Juneja signed the required undertaking to restrict his practice to criminal or personal injury. That undertaking contained the following statement:

I understand that I am bound by these undertaking (sic) as a condition of my reinstatement to the Law Society of Alberta, and that they shall remain in effect (and I will continue to be bound by them), until I am advised in writing that they have been varied or removed.

34. The practice restriction undertaking was clear that it was “subject to reapplication to the Practice Review Committee.” Mr. Juneja made no such application. Mr. Juneja was aware, or ought to have been aware, that in order for him to vary a practice condition or undertaking he would be required to address any such variation with the Practice Review Committee. Mr. Juneja had done this earlier in 2016 and this requirement was also referenced in a number of self-reports filed by Mr. Juneja. It is reasonable to conclude that Mr. Juneja was aware of the process for modifying practice restrictions or undertakings.

35. It is further established by the evidence that Mr. Juneja at no time made any application to the LSA to vary or modify the practice restrictions, nor did the LSA at any time inform Mr. Juneja that this undertaking was varied or removed.

36. Respecting the LH Litigation:

- (a) Whether or not one is engaged in the practice of a certain type of law is not dependent on for whom one acts or whether one was paid for services. In this case, acting for his employer does not change the nature of the legal work being done by Mr. Juneja. His employer may have been his client, but the work done was still civil litigation. The fact that Mr. Juneja was acting for his employer in the LH Litigation does not mean that Mr. Juneja was not practicing law, and as a result he failed to adhere to his practice restrictions.
- (b) The fact that the files under dispute were criminal files does not then convert the underlying nature of the action into a criminal matter. The LH Litigation was clearly a civil action.
- (c) There are clear indicia that Mr. Juneja was practicing law outside of the confines of his practice restrictions, which are evidenced by the following:
 - i. He conducted questioning of LH on June 4, 2018.
 - ii. He appeared in court on June 7, 2018 in respect of the application by LH over the disputed clients and argued the merits of the application.
 - iii. Mr. Juneja consented to an Order arising from the June 7, 2018 court appearance.
 - iv. Although some of the email communications with NT do suggest that Mr. Juneja was simply a conduit for JC, the collective effect of the emails leads

reasonably to the conclusion that Mr. Juneja had the hallmarks of being a lawyer and that he was effectively practicing law.

37. Respecting the AO litigation:
- (a) It was clearly a corporate/commercial litigation matter.
 - (b) On July 16, 2018 Mr. Juneja conducted a cross-examination on the affidavit of the opposing party, which is clearly practicing law. Acting as an “agent” does not mean one is not acting as a lawyer. Mr. Juneja’s express indication on the record that he was acting as an “agent” reasonably shows that Mr. Juneja was aware that the LH Litigation was civil in nature and that he was attempting to find some justification for practicing outside of his practice restrictions.
 - (c) The emails of July 2, 2018 and June 25, 2018 with NF are mixed in terms of their probative value, but on a balance of convenience we find that they are indicative of practicing law. In particular, we note that Mr. Juneja cited case law in support of a legal position, cited the Rules of Court in respect of procedural matters and discussed the possibility of a formal offer to settle.
38. There can be a fine line between merely being a conduit for his supervisor, JC, and actually engaging in the practice of law. While the evidence from JC about Mr. Juneja’s role to some extent mitigates in favour of Mr. Juneja’s position that he was not acting in contravention of his practice restrictions, the onus still rests squarely on his shoulders to take active steps to contact the LSA to determine if this work was outside the scope of his practice restrictions. He did not do so.

Decision

39. The undertaking restricting Mr. Juneja to certain practice areas is clear and unequivocal. Mr. Juneja was well aware of those practice restrictions and his obligation to comply with them. Mr. Juneja was also aware that any variation of the practice restrictions undertaking would require that he make an application to the LSA.
40. The Committee therefore finds that Mr. Juneja breached his undertaking in respect of restricting his practice to criminal and personal injury law. In particular, the Committee finds that between May 21, 2018 and June 7, 2018 Mr. Juneja acted for the Defendants in the LH Litigation, which was neither a criminal or personal injury matter and that Mr. Juneja acted for Defendants between June 25, 2018 and July 24, 2018 in the AO Litigation, which was neither a criminal or personal injury matter.

Citation 2: Misleading Counsel

Particulars: Citation 2

41. Citation 2 alleges that Mr. Juneja misled opposing counsel, NT, as to the authority of Mr. Juneja to act on a matter and in particular that Mr. Juneja emailed NT on May 24, 2018 to advise NT that Mr. Juneja was acting in accordance with his current practice restrictions, which was untrue, and with the authorization of the LSA, which was also untrue.

Evidence: Citation 2

Evidence of NT

42. As noted above, the LSA called as a witness NT, who was the lawyer retained by LH in the LH Litigation. The pertinent evidence from NT relating to this citation was as follows:

- (a) NT had noted that there was a practice restriction on the emails from Mr. Juneja. NT then followed up with an email dated May 24, 2018 to Mr. Juneja:

I've been alerted to the attached decision and Order from the Law Society of Alberta, dated 3 January 2014. It appears to restrict your practice to criminal defence and personal injury, with [JC] supervising you and undertaking to ensure that these are the only areas you practice, until such time as you satisfy the Law Society Committee otherwise.

Obviously this litigation is neither criminal defence or personal injury. However I appreciate that this Order was 3 years ago and I do not know what has transpired since. I trust that since [JC], your supervisor in this Order, is the one who retained you to represent him and since you have confirmed that you are acting in this litigation, that you are in compliance with this or subsequent Law Society conditions. Please confirm.

- (b) Mr. Juneja on that same date replied to NT by email:

I have spoken with the Law Society on occasions concerning my representation of our firm, in matters such as this including taxations. I am acting in accordance with my current conditions.

- (c) NT indicated that he accepted this explanation from Mr. Juneja.

Evidence of Mr. Juneja

43. The evidence from Mr. Juneja was as follows:

- (a) Mr. Juneja stated that he never contacted anyone at the LSA to ask if he could act on taxation matters since he believed that this was within the purview of criminal law (being that the files under taxation were criminal files), and he believed the LSA was aware of his so acting since it was raised at a meeting with KH.

- (b) During cross examination, Mr. Juneja was asked if he expressly addressed the LH or AO Litigation with the LSA, and the following explanation was given by Mr. Juneja regarding his email of May 24, 2018:

A What I am saying to you is, no. I did not address those matters specifically with the Law Society. But my messages, as I read it, and as I intended it, does say that I discussed this particular matter or the [OA] with the Law Society. It says, "matters such as this" and those include taxations. To me this is an extension of taxation. We are fighting over money attributable, attributable files, we are fighting over possession of files. It's representation of

our firm. The Law Society knew I was doing matters such as taxations, and that's what I'm referring to. I didn't say I spoke to the Law Society about this particular file, or in fact any particular file that I'm referring to here, and it doesn't mention that Mr. [KS].

Q It mentions that you spoke to the Law Society of Alberta on occasions concerning my representation of our firm. Now you're saying that that only refers to taxations. Are we to read this email as only referring to taxations?

A Yes. It clearly says: in matters such as this in [sic] including taxations.

Q Okay.

A It doesn't say these particular files.

Analysis and Decision: Citation 2

Analysis

44. The position of Mr. Juneja appears to be that his email of May 24, 2018 to NT was such that the statement of "matters such as this" was effectively qualified by the inclusion of the reference to including taxation matters. The Committee does not accept the explanation provided by Mr. Juneja. The email of May 24, 2018 from Mr. Juneja to NT clearly contains two false statements:
- (a) At no time did Mr. Juneja speak with the LSA about the J law firm in "matters such as this", which would have been in specific reference to the LH Litigation. Mr. Juneja acknowledged under cross examination that he never spoke with anyone at the LSA specifically about the LH Litigation matter.
 - (b) The evidence from DM and KH was that they at no time during any of the meetings they had with Mr. Juneja did he mention representing the J law firm on taxations. KH was particularly certain that had this been discussed at any meetings with Mr. Juneja she would have certainly made a note to that effect. Both DM and KH were very certain about not being told about taxations, whereas Mr. Juneja could only say that he believed the LSA was aware. Given the strong degree of certainty by KH and DM, the Committee prefers the evidence of KH and DM to that of Mr. Juneja.
 - (c) Mr. Juneja may have intended his email to read as being qualified such that the LH Litigation was an "extension" of taxation matters, but that interpretation does not logically or reasonably flow from the express wording and is not consistent with other evidence on this issue.
 - (d) Taxations are administrative functions and do not fall within the terms of the practice restrictions. It is unreasonable to equate and connect taxations with litigation matters such as the LH Litigation. They are far from being the same type of legal matter.
45. The Committee is also of the view that it is not necessary to find that Mr. Juneja had an intention to mislead. Whether Mr. Juneja intended to mislead is not the issue. The email

viewed objectively would have reasonably misled NT. It is also clear that NT took Mr. Juneja at his word and did not otherwise question the truthfulness of the email of May 24, 2018. No doubt NT as a lawyer would have accepted the word of another lawyer.

Decision

46. It is therefore the finding of the Committee that Mr. Juneja misled NT in the reply email of May 24, 2018. In particular NT was misled in believing that Mr. Juneja was acting in accordance with his practice restrictions and that he had authority from the LSA to act in the LH Litigation, both of which were untrue. The Committee is concerned with the issues regarding Mr. Juneja's integrity that are raised by his email of May 24, 2018. It cannot be expected that NT was to divine from Mr. Juneja's email the meaning Mr. Juneja urged upon us in his evidence. This conduct is incompatible with the best interests of the members of the LSA, who have a reasonable expectation of honesty from other lawyers and that communications will be clear and not open to interpretation.
47. As clearly stated in the commentary under section 7.2-2 of the Code of Conduct (Code), no lawyer is entitled to deliberately mislead another lawyer. The Committee finds that the email from Mr. Juneja of May 24, 2018 was deliberately misleading and raises concerns about the integrity of Mr. Juneja. As such, we find that Mr. Juneja's conduct constitutes a breach of section 7.2-2 of the Code, which states that "A lawyer must not lie to or mislead another lawyer." The conduct is therefore deserving of sanction.

Citation 3: Abstention

Particulars: Citation 3

48. This citation alleges that Mr. Juneja breached his undertaking given March 3, 2015 to abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs were prescribed. The factual particulars alleged are as follows:
 - (a) Mr. Juneja consumed cocaine around January 3, 2019 to April 3, 2019.
 - (b) Mr. Juneja consumed alcohol sometime between March 3, 2019 to April 3, 2019 and on September 14-15, 2018.
 - (c) Mr. Juneja consumed cannabis regularly starting February 25, 2018 without a prescription and also from September 14-15, 2018 for recreational purposes without a prescription.
49. This citation revolves around three time periods with unrelated evidence in respect of these time periods:
 - (a) Evidence regarding the consumption of cocaine around January 3, 2019 to April 3, 2019 and the use of alcohol during between March 3, 2019 to April 3, 2019 revolves around the evidence from two experts. The LSA called a psychiatrist, CE, and Mr. Juneja called a bioengineer, CB.
 - (b) Evidence regarding alcohol consumption on September 14-15, 2018 from certain third parties.

- (c) Evidence regarding cannabis use on September 14-15, 2018 involving a purported prescription for cannabis and whether such use was recreational in nature.
- (d) Evidence regarding cannabis use on and after February 25, 2018 also involving the existence of a prescription for cannabis.

Evidence: Citation 3

Evidence of Expert Psychiatrist

- 50. Following a self-report from Mr. Juneja in October 2018, which apparently raised an issue about cannabis use, a request was made by the LSA that Mr. Juneja attend for an Independent Medical Evaluation (IME). Mr. Juneja raised no objections to participating in an IME.
- 51. On March 28, 2019 and on April 16, 2019 Mr. Juneja attended for an IME with a psychiatrist, CE, who was qualified at the hearing as an expert psychiatrist, addictions specialist, medical review officer and occupational physician. A report was tendered in evidence from this IME on May 4, 2019 (IME Report). A second supplemental report (Addendum Report), dated May 31, 2021, by CE was also entered into evidence. CE stated that he uses a third party to act as a scribe and chaperone, who in this case was a registered social worker, during the two attendances by Mr. Juneja.
- 52. As part of the IME, CE referred Mr. Juneja for toxicology testing. This involved a hair follicle test, a blood test and a urine sample test. The toxicology reports came back with the following results:
 - (a) The urine was positive for cannabis.
 - (b) The hair test was positive for cocaine (and three of its breakdown products) and cannabis.
 - (c) The blood tested positive for one of the breakdown products of alcohol.
- 53. Two different collection sites were used:
 - (a) [A] Medical for the urine sample; and
 - (b) Second Impressions for the hair and blood samples.
- 54. The actual testing was done at [C], [D], and [U]. CE stated that the protocol he followed does not require him to obtain the chain of custody documents or to confirm whether a testing site is accredited.
- 55. CE testified that the rates of degradation of a second sample was outside the scope of his expertise, but that the laboratory would be able to advise as to the rates of degradation.
- 56. During the interview of April 16, 2019 Mr. Juneja stated to CE that he consumed edible cannabis on October 3, 2018, which was the day he was arrested for the charge of

resisting arrest and uttering threats (see below). Also, during the interview Mr. Juneja stated that in the last three months he had generally consumed edible cannabis two or three times per week and that he had last consumed cannabis the day prior to the IME. CE indicated in his evidence that consuming cannabis prior to meeting for an IME was unusual given the undertakings and issues that Mr. Juneja was dealing with as a lawyer.

57. CE indicated that the Medical Review Officer (MRO) who signed off on the reports assumes full responsibility for the integrity of the entire sample testing process, including collection and chain of custody. The MRO oversees the testing process from beginning to end and the “chain of custody” is a concept used in the context of forensic toxicology testing. Chain of custody requires that every step in the process, from the initial collecting of the sample to the final reporting, is documented. An MRO has a training and reference manual that is their “bible” of how to perform their work and it requires a high degree of fidelity. An MRO does not however review instrument and protocol validation and calibration used by laboratories.
58. CE stated that urine usually gives a two- to-three-day detection window for consumption of most substances, except for cannabis that is chronically used, where it can be a bit longer. For the blood test the presence of alcohol was not a “very high positive”, but it was a “distinctively positive” and “you need roughly seven alcoholic beverages to test positive.” As to when the alcohol was consumed, it would have been “within the last few days or weeks” prior to the testing. As regards the testing laboratory, [U], CE indicated that he had used this laboratory on many occasions, that they had a “stellar” reputation and CE had never heard of anyone challenging the integrity of [U].
59. CE would not as part of his role as an MRO obtain information about certification or laboratory testing procedures because CE assumes that a nationally accredited laboratory has properly performed the tests.
60. The expert psychiatrist’s Addendum Report stated:
 - i. The hair sample tested positive for cocaine and three cocaine metabolites (breakdown products), one of which only forms when consumed in combination with alcohol.
 - ii. The window of detection for a positive cocaine hair test is approximately three months.
 - iii. The positive test results were not environmental, nor accidental, and could not be explained by the use of contaminated cannabis.
61. These test results were signed off by an MRO, but this person would not be involved in establishing laboratory standard operating procedures and protocols or conducting quality assurance or validation or calibration of any instruments.
62. At the April 16, 2019 meeting between Mr. Juneja and CE, Mr. Juneja indicated that he was not in agreement with the test results. Mr. Juneja had earlier emailed CE on April 11, 2019 wherein Mr. Juneja denied using either cocaine or alcohol. In that email, Mr. Juneja advised CE that he was contacted by an MRO regarding the blood and hair test results both showing positive for alcohol and cocaine. The MRO asked Mr. Juneja for an explanation concerning these positives, which Mr. Juneja denied, and Mr. Juneja asked

about the time frame of the testing. Mr. Juneja's email stated that the MRO indicated that was something that Mr. Juneja would have to discuss with the employer that requested the test. CE gave evidence that the role of the MRO would be to rule out any explanations for a non-negative test or a presumptively positive test, and that usually the implications of the result would be discussed with the requestor of the test. CE did not request any second sample be tested. Mr. Juneja did not refute the positive cannabis test since he was not denying using cannabis.

63. CE gave evidence that where a test result is being questioned, the request to have the second sample tested would usually come from the donor directly to the testing company. The testing protocol does not require that CE have the second sample tested. CE stated that he had the option to request a testing of the second sample, but that the MRO's function was to deliver a result, which they did.
64. During the cross examination of CE, a question was raised about the consumption of "near beer" and whether that could lead to a positive test for alcohol (PEth test). CE testified that he was "not aware of any empirical evidence that would support that hypothesis." When presented with a scenario where someone consumed seven near beers over a period of several weeks, CE did advise that this would mathematically equate to the same amount of alcohol as seven ordinary beers. However, CE noted that he was "simply not aware of any published evidence on Near Beer over a period of days or weeks and the impact on the PEth." CE also stated that he intuitively did not consider this hypothetical near beer as a plausible explanation for the positive PEth test.
65. When questioned about the sensitivity of the PEth test to such things as personal care items, over-the-counter medications, cleaning products, desserts, wine, vinegar and the like, CE testified that:

What is established is that, in order to reach the 20 nanograms per ML cutoff, you need a substantial amount of exposure to ethanol or alcohol, and that is not a consequence of incidental or dietary exposure, only because it needs too much alcohol in order for that to go by unnoticed. For example, if you claim that it's the dessert or tiramisu, it's not plausible that you would not have detected alcohol, simply given the amount that is required to test positive. So, yes, all of these parameters, I mean, there's always research happening with these. The bottom line is that the result I observed, I could not explain by incidental exposure or environmental exposure.
66. During cross examination CE also was questioned about alcohol ingestion through food or through environmental factors. Mr. Juneja advised CE via correspondence that he was using [...], but CE stated that no such medication was on the medication list in his IME Report. As part of the protocol for an IME Mr. Juneja would be required to complete a self-assessment questionnaire that requests a list of medications that Mr. Juneja would be taking, but Mr. Juneja did not list any [...] products.
67. CE had reviewed the video footage from the afterhours club and the police station that was taken on September 14-15, 2018 (which is more fully canvassed in citation 5). In reviewing Mr. Juneja's physical demeanour in those videos, CE in response to a question about whether Mr. Juneja's conduct, when measured against the criteria for alcohol, cocaine or cannabis intoxication, met the minimum criteria for any of the intoxication syndromes, CE replied:

The viewing of what I would deem not optimal quality video clips, I would not substitute an assessment to determine that. So all I could say is, based on the review of these particular clips, I was not able to suggest that he met criteria for any of those intoxication syndromes. It does not mean and it's not a reliable way of saying he was not intoxicated. I'm simply saying, I did not see him meeting the criteria solely based on the video. But again, that doesn't substitute an assessment.

68. CE wrote in his Addendum Report that he was “unable to confirm with a reasonable medical certainty that Mr. Juneja was under the influence of alcohol, cocaine, cannabis, or any other psychoactive substance at the material time.”

Evidence of Expert Bioengineer

69. Mr. Juneja called a bioengineer, CB, who was qualified at the hearing as an expert in all areas of laboratory testing and analysis, including forensic testing of biological samples, laboratory protocols and procedures, and quality assurance as regards laboratory testing methods and protocols. While qualified as an expert in this area, CB is not a physician or an MRO. CB provided evidence as follows:

- (a) A fundamental aspect of laboratory testing is “chain of custody”, which requires that a detailed record be maintained of the laboratory process.
- (b) When discussing the technical aspects of the testing process, CB gave evidence as to the importance of protocol validation and instrument calibration when he stated:

While the test results suggested a level of accuracy and reliability appropriate for the clinical context, in situations where the results of the testing may lead to significant legal or administrative consequences, additional measures should be taken.

- (c) If an individual disputes lab results, then a testing facility or lab would provide a chain of custody, protocols used for the testing and the standard operating procedures used. If a second sample was taken, that second sample should be tested as quickly as possible. A second hair and urine sample should still provide a valid test result if tested a few days after the first sample results were issued, but the blood sample will depend on how it was stored.
- (d) As to the laboratory report, CB testified:

The laboratory report showing various positive and negative specific test results appears to be relatively typical for a medical office within which physicians can offer drug testing services to patients. However, for any situation in which legal or other significant administrative action may depend upon the test results, additional measures must be taken in order to ensure accuracy and reliability of the laboratory methods, testing procedures, and results.

- (e) CB gave further evidence about these “additional measures”, which would include most importantly a chain of custody for the tracking of samples, the

storage conditions for biological samples, instrument protocol validation and laboratory standard operating procedures.

- (f) CB was not certain if a donor would be able to request this “additional information” from the testing laboratory, though CB did not see any reason why a donor could not.
- (g) CB could not however impugn the toxicology results presented here and he stated: “I want to be clear that I’m not saying that I definitely know something was incorrect, as well as I don’t know something was correct.” He further stated:

...Although these documents and methods may exist within the [U], I have not been provided information or documents demonstrating as such. In order to confirm the results of the testing shown, I recommend that supporting documentation for the above confirmational elements, as well as any other available laboratory documents supporting confirmation of this testing, are provided for review.
- (h) An MRO is not required to comply with any of the “additional measures” prior to that officer signing off on reports.
- (i) Regarding [U], CB indicated that they were an approved and accredited testing facility in 2020, but he could not state whether they were so approved in 2019.

Witness Evidence Regarding Alcohol Use on September 14-15, 2018

70. The consumption of alcohol on September 14-15, 2018 involves an incident that took place during the early morning hours of September 15, 2018. Specifics of this event principally concern citation 5 and are more particularized below under that citation. Suffice to say that an altercation took place between Mr. Juneja and the security staff at an afterhours club in Edmonton, which resulted in the police being called. Mr. Juneja was arrested at the afterhours club and taken to police headquarters where a further altercation took place between Mr. Juneja and various police officers. The Committee heard evidence relating to alcohol use from the following persons:

- (a) BC, a security staff person at the afterhours club, in giving evidence about his contact with Mr. Juneja, stated: “He had obviously been drinking, he smelled of alcohol.”
- (b) CS, another security staff person at the afterhours club, indicated that Mr. Juneja “smelled of alcohol”.
- (c) Constable LM, one of two arresting officers, when asked about whether he thought Mr. Juneja had been drinking, stated:

Yeah. Just based on his behaviour. I could smell the alcohol coming from his breath, just basically his aggressive behaviour, him slurring his words, like I could tell he was under the influence of alcohol.
- (d) Sergeant JM, who later on the morning of September 15, 2018 escorted Mr. Juneja from the police cell, gave evidence as follows:

Yes. I noticed his eyes were bright red, like very red, the whites of his eyes were very red. There was a strong odour of liquor coming from him. I noticed that his gait was off. He staggered when he walked. He was – he shouted a lot, and he was very belligerent. And I formed the opinion, anyway, that he was intoxicated by alcohol.

- (e) Detective TS was tasked with processing Mr. Juneja's release from custody on the morning of September 15, 2018 and he gave evidence as follows:
- i. About 10:54 a.m. TS opened the Mr. Juneja's cell door and offered Mr. Juneja a telephone to call a lawyer. TS gave evidence that at this moment he "noted that there was a strong smell or odour, which I stated in my notes that he reeked of liquor. As he spoke, a stale but very strong odour came out of his mouth".
 - ii. After providing Mr. Juneja with his property, TS walked Mr. Juneja to another building about a block away where Mr. Juneja could pay his fine. TS stated in his evidence: "As he walked, he was very careful and laboured in his walking, and it showed me that he was still very intoxicated on alcohol."
 - iii. TS advised Mr. Juneja that he would be investigating the threats made by Mr. Juneja against the arresting officer, to which Mr. Juneja replied that these were not threats, but were a "challenge".
 - iv. When reviewing the police cell videos, TS could not say if Mr. Juneja was intoxicated, though TS agreed that Mr. Juneja showed no indicia of being intoxicated.
 - v. TS was quite certain that Mr. Juneja was intoxicated and that for this reason he was not prepared to let Mr. Juneja drive following the payment of the fine.

Evidence of JC

71. Mr. Juneja's principal, JC, provided evidence on behalf of Mr. Juneja. JC stated that he does not tolerate alcohol or drug use by his staff lawyers and that JC had never seen Mr. Juneja in a state where he was "unfit for work that would give me the impression that he was breaching his undertakings".

Evidence of LH

72. LH was aware that Mr. Juneja used cannabis from time to time pursuant to a prescription and that she had consumed cannabis with him on occasion in the form of "baked goods". LH was with the J law firm until April 30, 2018.

Evidence of Mr. Juneja

73. On at least one occasion, Mr. Juneja informed KH that he was using a sleep medication. Regarding cannabis use, Mr. Juneja indicated that he discussed this with KH since in the most recent report Mr. Juneja had indicated that he had a prescription for cannabis. KH asked Mr. Juneja if his doctor was aware of his issues, to which Mr. Juneja informed KH that "yes", his doctor was aware.

74. At his meeting for the IME, Mr. Juneja informed CE that he suffered from alcoholism, but following treatment, had been abstaining since June 2011, other than a relapse in 2014. However, Mr. Juneja denied having any other substance abuse problems, though he did use other illegal substances, including cocaine, but only when consuming alcohol. Regarding the cannabis prescription, CE was informed that the use of cannabis was for [medical conditions].
75. In addition to the cannabis prescription, Mr. Juneja informed CE that he had been prescribed [...]. This last item was never used by Mr. Juneja prior to his being tested.
76. The blood, urine and hair sample were all collected at a site in Leduc, Alberta with a registered nurse and medical doctor present. They took two blood and urine samples and several strands of hair.
77. Mr. Juneja was contacted by the lab twice; first to advise him of the cannabis testing results, and second to inform him of the cocaine and alcohol testing results. On this second telephone call Mr. Juneja was asked if had any explanation for these results, to which Mr. Juneja stated that the results must be wrong. The person who called then said that he was going to report the findings.
78. Immediately following this telephone call, Mr. Juneja sent an email to CE indicating that the results were inaccurate and expressly denying using cocaine or alcohol. At a meeting with CE the following week, Mr. Juneja said that CE advised that there could be other possible environmental factors, though CE was not prepared to say that this had happened. Based on this suggestion by CE of environmental factors, Mr. Juneja left matters at that. It was not until the Addendum Report that Mr. Juneja became aware that there were no environmental factors that could contribute to the test results.
79. Mr. Juneja indicated that for the time periods in question, he did not consume alcohol, other than “near beers”, which are alcohol substitutes.
80. Following receipt of the Addendum Report of CE, Mr. Juneja was told that in order to evaluate the reliability of results, he would need to obtain a data packet, which would contain calibration records, solution authentication, chain of custody documents and other technical information. Mr. Juneja wrote the lab in Leduc on June 4, 2021 requesting the entire data packet. The reply was that the lab did not have the data packet, and a list of options from the actual testing facility was provided, but none of these included a data packet. When Mr. Juneja tried to call the testing lab that performed the cocaine analysis he was told that only the person who requested the test could obtain any information. The end result was that Mr. Juneja was unable to obtain the data packet.
81. Regarding the issue of consumption of cannabis after February 25, 2018, Mr. Juneja gave evidence as follows:
 - (a) Documents were entered into evidence showing that on or about October 5, 2016 Mr. Juneja consulted with a physician and obtained a prescription for the use of medical cannabis. Thereafter on November 25, 2016 Mr. Juneja registered with an online cannabis provider. This registration was approved on November 25, 2016 and it expired on February 17, 2017. On February 25, 2017

Mr. Juneja registered with a different online cannabis provider and this registration expired February 25, 2018.

- (b) During his testimony, Mr. Juneja confirmed that this last registration was never renewed and that it expired February 25, 2018. Mr. Juneja stated that he did not purchase cannabis after February 25, 2018.
 - (c) Prior to the expiry of the last registration, Mr. Juneja ordered the maximum quantity possible so that he would have a sufficient amount for future needs. Mr. Juneja acknowledges that he was consuming cannabis after February 25, 2018 on almost a daily basis.
82. In respect of the evening of September 14-15, 2018, Mr. Juneja admits to consuming cannabis edibles, though he unequivocally denies that this was recreational use. His evidence was that he used some 300 milligrams of cannabis that evening to deal with his social anxiety. In addition, Mr. Juneja admitted to smoking cannabis. During cross examination Mr. Juneja did admit that the edibles were purchased online by him and outside of the prescription timeline. When questioned about the recreational aspect of his cannabis use that evening, he stated under cross examination:
- Q Okay. And I will suggest to you that sometimes that use is recreational, such as in the evening of September 14 and 15, 2018?
 - A I can't really dispute that to be honest with you. I mean, like I say, I don't know how you distinguish between recreational and medicinal use when you're using for [medical condition]. I took it in social settings all the time, but I had [medical condition].
83. Mr. Juneja also admitted to consuming edibles between October 17, 2018 (the date of legalization) and May 4, 2019 (the date of meeting with CE). This consumption was very close to being daily, but upon the suggestion of CE Mr. Juneja began tapering off after May 4, 2019 to smaller weekly doses. He further admitted that he shared "pot cookies, pot brownies and edibles" with LH in 2016 and up until the end of 2017 but denies that this was recreational in nature. Mr. Juneja acknowledges that accepting and using these various forms of cannabis was outside of the prescription period. However, Mr. Juneja's position on the use of cannabis after the expiry of the prescription was that the undertaking did not specifically prohibit his use of cannabis where that cannabis was acquired by a prescription.
84. Mr. Juneja purchased more cannabis than he required while his prescription was still active, with the intention of consuming it over a period of time. Mr. Juneja relies upon the Supreme Court of Canada case of *R. v. Smith*, 2015 SCC 34 (CanLII), [2015] 2 SCR 602 which dealt with the use of medical cannabis. That case apparently struck down a prosecution where the court held that where the government has legalized the sale of prescription cannabis one could not then restrict what form that cannabis takes. Mr. Juneja takes the position that cannabis is a psychoactive substance, but post legalization cannabis was no longer a psychoactive substance and thus not a breach of the undertaking.
85. Mr. Juneja was also of the opinion that he could consume cannabis after its legalization on October 17, 2018, and this would not be contrary to his undertaking.

Analysis and Decision: Citation 3

86. It is clear on the evidence that Mr. Juneja was aware of his undertaking to abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs are prescribed by a physician who is fully aware of his substance dependence and feels that their use is necessary.

Toxicology Reports

87. In respect of the toxicology reports, Mr. Juneja raised a number of arguments:
- (a) That the LSA failed to have the second samples tested despite his request to the psychiatrist, CE.
 - (b) That the LSA failed to provide evidence regarding the validity of the first sample, which requires the LSA to provide a chain of custody, the storage conditions for the biological samples, evidence of instrument protocol validation and laboratory standard operating procedures.
 - (c) That the positive test results could have been a false positive result due to environmental factors.
 - (d) That an alcohol substitute could have caused a false positive result in the urine sample.
 - (e) That the LSA failed to call evidence regarding the delivery or transportation of these samples or about the testing methodologies utilized at the testing facilities. This “chain of custody” argument results in the lab results being unreliable hearsay evidence.
 - (f) Mr. Juneja advised the psychiatrist, CE, that he was contesting the lab results and that the psychiatrist took no steps to have a second set of samples tested.
88. There is no evidence that the toxicology reports are anything but valid and based on the best evidence available. There is nothing which would support that the tests were anything other than valid. Addressing the issues raised by Mr. Juneja, the Committee finds as follows:
- (a) That CE, in the Addendum Report, found that Mr. Juneja’s blood sample tested positive for an alcohol metabolite, with a window of detection of up to four weeks. This places the positive test within the period of time between March 3, 2019 and April 3, 2019.
 - (b) There is no evidence to support the argument that “near alcohol” can cause a false positive test result.
 - (c) Mr. Juneja is of the view that environmental factors were present and may have influenced the cocaine and alcohol test results. However, by Mr. Juneja’s own evidence, CE had informed Mr. Juneja at their meeting that although such factors could be relevant, CE was not prepared at that time to say that this is a factor in this case. Mr. Juneja’s reliance on this statement by CE about environmental

factors as being a reason for not otherwise taking active steps to procure the second samples for testing makes no reasonable sense. CE at no time told or gave Mr. Juneja any indication that the test results would be shown to be unreliable for any reason. At most, the evidence can be taken to show that CE was merely speculating that such things as environmental factors could affect results, but that is a far cry from CE offering an express opinion about the validity of the test results. On the evidence presented to the Committee, there was no reasonable basis for Mr. Juneja to believe that the test results were going to be invalidated.

- (d) Once Mr. Juneja was informed of the positive test results for cocaine and alcohol, during the telephone interaction between Mr. Juneja and the person from the lab in Leduc, Mr. Juneja made no attempts to request that the second samples be tested. Furthermore, after the meeting with CE, Mr. Juneja could have taken active steps to have the second sample tested, but he did nothing.
- (e) Accordingly, the LSA is under no obligation to call witnesses to confirm the “chain of custody”. The LSA called CE who gave evidence about the toxicology reports and that evidence is accepted by the Committee. The onus is on the LSA to prove the allegations on a balance of probabilities and the evidence has met that test in that it is established that the toxicology tests were valid.
- (f) The Committee agrees that admitting unreliable evidence would unfairly shift the burden of proof. However, in this case the toxicology evidence was reliable. That evidence was provided and obtained by the expert, CE, who stated that there was no reason in his opinion to bring the reliability of the toxicology reports into question. There was no evidence to the contrary.
- (g) On April 11, 2019 Mr. Juneja learned of the positive tests for cocaine and alcohol. In response, Mr. Juneja sent an email to CE informing him that he was able to account for his whereabouts during the relevant time periods and was disputing the test results. Thereafter, Mr. Juneja took no action until some two years later when he attempted to contact the testing facilities. In light of the serious implications these results would have for his practice restrictions and related obligations to the LSA, and the fact that he was disputing these results, it was not unreasonable to expect that Mr. Juneja would have been much more active in disputing the results and assembling the appropriate evidence in support of his concerns. This did not occur.

Recreational Cannabis Use September 14-15, 2018

- 89. In respect of the allegation that Mr. Juneja consumed cannabis on September 14-15, 2018 for recreational purposes without a prescription, Mr. Juneja admits that he used cannabis on those dates. However, his position is that he did have a prescription and that the use was not for recreational purposes.
- 90. In respect of the allegation of the consumption of cannabis on September 14-15, 2018 without a prescription and for recreational purposes, the Committee finds:

- (a) Mr. Juneja admitted using cannabis on September 14-15, 2018. Mr. Juneja was not surprised that the lab results showed cannabis when he stated during direct examination that: “Yeah, I kind of expected that”.
- (b) The issue revolves around the use of cannabis for a recreational purpose. Mr. Juneja testified that he was using as per his prescription for [medical conditions]. However, the Committee is of the view that this purported use does not accord with the facts. This was a Saturday night and early Sunday morning where Mr. Juneja was out socializing with friends followed by his attendance at the afterhours club. The reasonable conclusion is that Mr. Juneja was out socializing and consuming cannabis in a recreational setting. That use may have a medical component, but that medical usage is reasonably a secondary aspect related to the consumption.

Alcohol Consumption September 14-15, 2018

- 91. In respect of the witnesses who testified about the consumption of alcohol on September 14-15, 2018, Mr. Juneja argues twofold: (1) that the witness evidence regarding the odour of alcohol was inconsistent and conflicting; and (2) the witnesses colluded in their testimony.
- 92. Mr. Juneja raises the following factual arguments regarding his interaction with the police officers at the police station, and regarding the officers’ testimony regarding detecting the odour of alcohol on him:
 - (a) That the video evidence supports the conclusion that Mr. Juneja was not impaired by alcohol.
 - (b) That the officers’ evidence regarding the odour of alcohol on Mr. Juneja was inconsistent and those officers who gave evidence that they could detect an odour of alcohol were in collusion as it relates to this evidence.
- 93. The Committee agrees that the video evidence alone would not reasonably support a conclusion that Mr. Juneja was impaired. Similarly, one cannot simply conclude from video evidence alone that impairment was not present. This was certainly the opinion of CE. However, this is not the only evidence which was presented on this point. There is credible evidence from three police officers who believed that Mr. Juneja was indeed intoxicated. These officers had close contact with Mr. Juneja and were well positioned by way of experience and proximity to observe Mr. Juneja’s condition. There is no evidence that the officers conspired together, and the Committee is of the view that the evidence supports the conclusion that Mr. Juneja had consumed alcohol on September 14-15, 2018, and the Committee so finds.
- 94. Evidence from the security staff at the afterhours club regarding Mr. Juneja’s behaviour and condition was also led by the LSA. Mr. Juneja expressed concerns with this evidence, which can be summarized as follows:
 - (a) The security staff knew the exact location of the exterior roof camera at the afterhours club and the bouncers intentionally pushed Mr. Juneja far enough away from the club to be out of camera range.

- (b) The police statements from the security staff were inconsistent on certain points relating to a claim that there was a white powder substance on Mr. Juneja's upper lip and nose. Mr. Juneja suggested that both BC and CS discussing the issue about a white substance being on Mr. Juneja's face was evidence of collusion.
 - (c) CS failed to mention in his police statement that he saw a residue of cocaine on Mr. Juneja's face but stated that this was in the report of another security staff, BC.
95. Mr. Juneja argues that in *R. v. Handy*, 2002 2 SCR 908 and *R. v. Shearing*, 2002 SCC 58 (CanLII), [2002] 3 SCR 33 the court held that before admitting similar fact evidence the trial judge must be satisfied of its reliability and exclude it if not satisfied on a balance of probabilities that the evidence is not tainted by collusion. We agree with this statement of law, but the citation as it stands makes no reference to the use of cocaine on September 14-15, 2022 and the Committee as such places no reliance on the statement by CS regarding a white substance on Mr. Juneja's upper lip.
96. Although the evidence of the security staff was not entirely consistent, the Committee finds that there is no evidence to support an allegation of collusion on the part of the security staff, in either giving their statements to the police or before the Committee. While we do not necessarily find evidence to support a finding of cocaine use on September 14-15, 2018 (which was in any event not part of the alleged particulars), both BC and CS provided reasonable explanations as to why they did not make any mention of the white powder in their police statements. While there may be some concern that either BC or CS merely duplicated what the other said in their police statements, that evidence is not certain and is not sufficient from an objective perspective to conclude that the witnesses colluded. The failure to mention every specific detail in a police statement is not in itself fatal to the credibility of a witness who later testifies providing further details. CS gave evidence that he was tired and wanted to go home and since BC had mentioned it in his statement to the police, he omitted it from his police statement.
97. The Committee finds that there is no evidence of collusion by these witnesses and in particular:
- (a) There was evidence that Mr. Juneja smelled of alcohol from no less than two experienced police officers, one junior police officer and two security staff.
 - (b) Five of the individuals were in close proximity to Mr. Juneja.
 - (c) While the officer who did the physical search of Mr. Juneja did not note any odour of alcohol, that does not negate the evidence of the three other police officers that did smell alcohol.
 - (d) CE, after reviewing the police station videos, was asked about whether Mr. Juneja appeared to be intoxicated. CE stated that he could not say one way or the other about the state of intoxication based strictly on these videos.
98. Mr. Juneja by his own admission was impaired that night, and his evidence must be approached with caution and is not to be preferred to that of the police officers and

security staff. The Committee is therefore of the opinion that Mr. Juneja had consumed alcohol on September 14-15, 2018.

Cannabis Use Starting February 25, 2018

99. Mr. Juneja takes the position that the cannabis he consumed after February 25, 2018 was purchased during the period of time when he had a prescription. However, the relevant undertaking to the LSA expressly provides Mr. Juneja is to abstain from such drugs unless prescribed by a physician. We accept that the cannabis was purchased with a prescription, but that does not allow for continued consumption once the prescription had expired. The maximum purchase of cannabis prior to the expiry of the prescription is merely a method of subverting the intention and purpose of the undertaking.
100. The Committee also does not accept the argument that post legalization cannabis was no longer considered a psychoactive substance. Legalization does not change the chemical makeup of the substance. While no evidence was specifically placed before the Committee about cannabis being a psychoactive substance, that was not otherwise disputed by any of the parties. It is therefore reasonable to conclude that cannabis remains a psychoactive substance.
101. The Committee accepts the evidence of DM that she had made two requests of Mr. Juneja that he provide a copy of his cannabis prescription (on May 1, 2018 and again on September 6, 2018). Despite these requests, no such prescription was ever provided to DM.
102. The Committee notes that it was the intention of DM to approach the prescribing physician to ensure that they were aware of the substance dependency issues of Mr. Juneja. However, there was never any written request by the LSA to Mr. Juneja for a copy of his cannabis prescription or any follow-up requests in writing. DM did state that a written request was in the works, but that until a date for the IME was established, no written request had been made.
103. Mr. Juneja offers the decision in *R. v. Smith* in support of his argument that the purchase of cannabis edibles by prescription users was legalized by the court. The Committee finds that *R. v. Smith* is not germane or supportive of the position taken by Mr. Juneja. That case dealt with persons who are legally authorized to possess cannabis for medical purposes. Mr. Juneja did not have a prescription after February 25, 2018 and as such he was not lawfully able to possess cannabis for medical purposes.
104. Furthermore, the legalization of cannabis has no bearing on the undertaking. That undertaking does not have an exception for possession on the basis of legalization.

Decision

105. Mr. Juneja was bound by an undertaking of March 3, 2015 to the LSA to abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs are prescribed by a physician who is fully aware of his substance dependence and feels that their use is necessary. There is no evidence that Mr. Juneja sought to vary or amend this undertaking with the Practice Review Committee.

106. There was no dispute by Mr. Juneja that cocaine is a psychoactive substance. The hair test was positive for cocaine and there was no evidence that would explain the presence of cocaine due to some other source or accidental ingestion. The conclusion is that Mr. Juneja consumed cocaine sometime during the period of January 3, 2019 to April 3, 2019.
107. Alcohol use is also prohibited by the terms of the undertaking. The hair and blood samples tested positive for alcohol and the conclusion is that alcohol was consumed between March 3, 2018 and April 3, 2019.
108. On September 14-15, 2018, five witnesses testified that they could smell alcohol on Mr. Juneja or that he appeared to be intoxicated. This evidence is accepted, and as a result, the Committee finds that Mr. Juneja consumed alcohol on these dates in contravention of his undertaking.
109. The Committee therefore finds that citation 4 has been proven such that Mr. Juneja breached his abstinence undertaking and in particular:
- (a) Mr. Juneja did consume cocaine around January 3, 2019 to April 3, 2019.
 - (b) Mr. Juneja did consume alcohol sometime between March 3, 2019 to April 3, 2019 and on September 14-15, 2018.
 - (c) Mr. Juneja did consume cannabis regularly starting February 25, 2018 without a prescription and also on September 14-15, 2018 for recreational purposes without a prescription.
110. Section 7.2-14 of the Code states:
- 7.2-14 A lawyer must not give an undertaking that cannot be fulfilled and must fulfil every undertaking given and honour every trust condition once accepted.
109. As such this breach is contrary to the Code and is conduct deserving of sanction.

Citation 4: Failure to be Candid

Particulars: Citation 4

110. The particulars of this citation are as follows:
- (a) Mr. Juneja in a quarterly report to the LSA dated March 15, 2018 stated that he had a prescription for medical cannabis, which was not true.
 - (b) During an interview with an LSA investigator on July 9, 2019 Mr. Juneja stated that he had not used alcohol since 2014 and that he had not consumed cocaine since 2009, both statements being untrue.
 - (c) During another interview with an LSA investigator on November 19, 2019 Mr. Juneja again stated that he had not used alcohol since 2014, which was not true.

- (d) In Mr. Juneja's response letter to the LSA of March 10, 2020, Mr. Juneja denied using alcohol or any other psychoactive substance, other than cannabis with a medical prescription, none of which was true.

Evidence: Citation 4

111. As part of his reinstatement in 2015 Mr. Juneja undertook to provide monthly, then quarterly, reports to the LSA. On March 15, 2018 Mr. Juneja provided the following report:

I am abstinent from the use of alcohol, and all non-prescription psycho-active substances. I do have a prescription for the use of medical marihuana, and have been using marijuana to assist me with [medical conditions].

112. Mr. Juneja's evidence was that he had a prescription for medical cannabis but the prescription had expired about March 1, 2018, some two weeks before the report of March 15, 2018. Mr. Juneja indicated that he did not seek a renewal of the prescription since the legalization of cannabis was imminent. Cannabis use was legalized October 17, 2018.
113. Mr. Juneja in his evidence confirmed that he told the investigator on July 9, 2019 that he had not used alcohol since 2014 and he had not used cocaine since March 2010. Mr. Juneja does not deny telling the same investigator on November 19, 2019 that he had not used alcohol since 2014.
114. In a response letter from Mr. Juneja to the LSA dated March 10, 2020, Mr. Juneja stated in part:

I have not used alcohol or any other psychoactive substances, except Cannabis for which I obtained a medical prescription.

Particularization of Citation 4

115. It is argued by Mr. Juneja that section 56¹ of the *Legal Profession Act (Act)* requires that the conduct in question under citation 4 must be submitted to the Conduct Committee prior to being referred to a hearing. The argument being raised is that the member must be given an opportunity to respond to the allegations as particularized before the citations are issued. Mr. Juneja is of the view that once the citations have been issued it is not appropriate to review the member's practice and files to find any other conduct that might fall within the parameters of the citations issued.
116. As such Mr. Juneja takes issue with the particularization of citation 4 where it is alleged that Mr. Juneja lacked candour when he confirmed to the LSA on July 8, 2019 that he had not used alcohol or cocaine in the recent past, and in reporting that he used prescribed cannabis to the LSA in March 2018. Mr. Juneja argues that this alleged conduct was not referenced before the Conduct Committee that issued the citations and therefore, being an entirely new allegation, should not be considered by the Committee.

¹ The Written Submissions of Mr. Juneja referenced section 63, but that section deals with suspensions arising during proceedings and would not therefore appear to be the correct section.

The LSA in their Rebuttal Submissions sets out the “additional” particulars that are in dispute:

- (a) Particular 4(a), which concerns an inaccurate quarterly report dated March 15, 2018;
- (b) Particular 4(b), which concerns inaccurate statements to an LSA investigator during an interview on July 9, 2019; and
- (c) Particular 5(c), which concerns Mr. Juneja’s procurement and consumption of cannabis, doing so at a time when it was illegal in the absence of a current medical prescription.

117. Section 56 of the *Act* states:

56(1) The Conduct Committee shall review any conduct of a member referred to it under section 53, 54 or 57.

(2) The Conduct Committee, in the course of its review under subsection (1), may do either or both of the following:

- (a) require the complainant or the member concerned to answer any inquiries or to produce any records that the Committee considers relevant for the purpose of the review;
- (b) direct that the conduct be investigated or further investigated.

(3) On completing its review under subsection (1), the Conduct Committee shall either

- (a) direct that the matter be dismissed, or
- (b) direct that the conduct be dealt with by a Hearing Committee.

118. There is nothing in section 56 of the *Act* which specifically addresses what information is to be considered by the Conduct Committee. Furthermore, no evidence was presented by Mr. Juneja to confirm that the Conduct Committee did not in fact have the necessary evidence.

119. The Committee is of the opinion that the fundamental concern is whether Mr. Juneja had a fair opportunity to respond to the allegations as particularized. This issue therefore raises the *audi alteram partem* rule, which requires that an individual must know the case against them so that they can make full answer and defence. This rule, when dealing with professional misconduct, requires adequate and fair disclosure by the LSA of the particulars of the case. If the disclosure was inadequate, then that would certainly amount to a procedural unfairness. However, the Committee is of the view that appropriate disclosure and sufficient particulars were provided to Mr. Juneja and that he has had an opportunity to make a full answer and defence regarding these particulars. As Mr. Juneja was aware of the citation particulars prior to the commencement of this hearing, thus affording him the opportunity to make full answer and defence, the Committee is prepared to allow the particulars as provided in citation 4 to stand.

Analysis and Decision: Citation 4

120. It is clear from the evidence and our findings that Mr. Juneja’s denial of the use of alcohol and cocaine is unsupported by the evidence. The toxicology reports are conclusive in showing that Mr. Juneja had in fact been drinking alcohol and using cocaine. As such the statements to the investigator on July 9, 2019 and November 19, 2019 are not true.
121. In the response letter of March 10, 2020, the statement that Mr. Juneja had a medical prescription for cannabis is at best a half-truth. The prescription had expired shortly before that date and Mr. Juneja was thereafter consuming cannabis without a prescription.
122. This citation raises the question of candour. In *Law Society of Alberta v. Sharma*, 2021 ABLS 2, an appeal panel of the LSA agreed with the analysis of the Hearing Committee, which defined “candour” as follows:
- [27] ... The Committee held that candour was the quality of being forthcoming. In particular, the Committee held:
- Omitting or modifying salient information in situations where the reasonable person would expect that it would be disclosed demonstrates a lack of candour.
97. ... the Committee found the following:
- ... Candour is the quality of being forthcoming. Omitting or modifying salient information in situations where the reasonable person would expect that it would be disclosed demonstrates a lack of candour.
123. “Candour” requires a reasonable person to disclose all salient and important information.
124. The Committee is satisfied that the untrue statements, either to the investigator or in the response letter, show a lack of candour. This failure to be candid amounts to a breach of section 7.1.-1 of the Code, which states:
- 7.1-1 A lawyer must reply promptly and completely to any communication from the Society.
125. A lack of candour cannot in any instance be compatible with the public interest or the interests of the LSA and its members and as such the conduct is deserving of sanction.

Citation 5: Discreditable Conduct

Particulars: Citation 5

126. This citation concerns a breach of section 2.1-1 of the Code. The particulars as alleged by the LSA are as follows:
- (a) On September 15, 2018 Mr. Juneja, while at an afterhours club in Edmonton, engaged in a physical altercation with the security staff during which he swore at

them, threatened to kill them, attempted to punch all of them and punched one of them;

- (b) On September 15, 2018, while in the custody of the Edmonton Police Service, Mr. Juneja resisted attempts to place him into a holding cell, resulting in a physical altercation with the officers during which Mr. Juneja swore at the officers and threatened to kill them; and
 - (c) Mr. Juneja procured and consumed an illegal substance, namely cannabis,
 - i. on September 14-15, 2018, which was illegal at that time in any form for a non-medical purpose; and
 - ii. between October 17, 2018 and October 17, 2019, in the form of edibles, which were illegal during that time period.
127. This citation concerns events that transpired in the early hours of a Sunday morning at an afterhours club in Edmonton. Mr. Juneja had arrived at the afterhours club around 2:00 a.m. on the morning of September 15, 2018. Shortly after his arrival, an altercation took place between Mr. Juneja and the security staff at the afterhours club, which resulted in the police being called. Mr. Juneja was arrested at the afterhours club and taken to police headquarters where a further altercation took place between Mr. Juneja and various police officers. These altercations were partially caught on camera at both the afterhours club and at the police station.
128. The LSA called a total of nine witnesses in respect of this citation: six police officers and three security staff. In addition to these witnesses, the Committee reviewed video footage (without audio) from inside the afterhours club and from the rear alley and parking lot behind the afterhours club where a fenced smoking area was located. Video footage (without audio) was also reviewed from inside the police station.

Evidence: Citation 5

Altercation with Security Staff at the Afterhours Club

129. On September 15, 2018 around 2:00 a.m. Mr. Juneja arrived at an afterhours club. At some point shortly after his arrival, Mr. Juneja was accused of touching a female patron. This led to a series of events which culminated in an altercation with security staff in an area outside and to the rear of the club, followed by his arrest and a further physical altercation with the police at the station.
130. BC was the front door staff person at the afterhours club, and was the first to interact with Mr. Juneja. BC gave evidence as follows:
- (a) BC noted that Mr. Juneja smelled of alcohol, had obviously been drinking and had a “white” residue on the bottom of his nose and upper lip. BC says he gave Mr. Juneja a napkin. Prior to entry into the afterhours club, a thorough search was done of Mr. Juneja and nothing was confiscated. Mr. Juneja was cordial and though BC believes he had been drinking, Mr. Juneja was not overly intoxicated and accordingly was allowed to enter the afterhours club. BC admitted that he did

not mention anything about the white residue in his police statement, but BC stated that he did tell the police that he suspected cocaine use.

- (b) Later that evening BC was called out to the rear parking area of the afterhours club where the altercation had started between Mr. Juneja and three other security staff. BC believes he arrived in the back area about three quarters of the way through the altercation and at that point observed Mr. Juneja fighting with three other security staff (CR, CS, WL). BC helped restrain Mr. Juneja.
- (c) BC stated that Mr. Juneja was threatening and spitting, and that WL had been holding Mr. Juneja's head to the side to stop Mr. Juneja from spitting. Mr. Juneja was also threatening to "fuck everyone" and "murder everyone".
- (d) BC stated that he had taken training in both ProTect and ProServe, which are courses that provide instruction on recognizing signs of intoxication or drug use.

131. The head doorman at the afterhours club, CR, testified to the following:

- (a) CR had received a "creeping complaint" against Mr. Juneja by a female patron. CR first saw Mr. Juneja in the afterhours club talking to WL and CR went over and asked Mr. Juneja to leave. Mr. Juneja was arguing, with his hands up, saying that he did not want to leave.
- (b) WL, CS and CR walked with Mr. Juneja to the outside area at the back of the afterhours club also known as the smoking pit where Mr. Juneja exited through a rear gate into a parking lot area. According to CR Mr. Juneja was "egging us on" and "yelling at us". CR told Mr. Juneja to go home, but Mr. Juneja said he wanted to fight the bouncers, to which CR replied: "What happened to the peaceful guy that did not want to fight inside?" Mr. Juneja replied that he would fight inside too, at which point Mr. Juneja "runs" at the gate. Mr. Juneja made it clear he wanted to fight and that he was coming back through the gate to start fighting. CR stated that there was no taunting by the staff.
- (c) When Mr. Juneja grabbed the gate the three security staff rushed out, pushing Mr. Juneja backwards. Punches were thrown by Mr. Juneja which hit WL. While on the ground Mr. Juneja was spitting, swearing, making threats and using homophobic slurs such as "you guys are a bunch of faggots" and "you guys want to fuck me in the ass". Once the police arrived and placed Mr. Juneja in a police cruiser, CR observed that Mr. Juneja was kicking the inside of the police cruiser.
- (d) In his statement to the police, CR made no reference to the homophobic slurs or spitting and he indicated that he did not mention this because he did not want to see Mr. Juneja charged.

132. CS gave evidence as follows:

- (a) He received a radio call that the other staff needed assistance with escorting Mr. Juneja out of the afterhours club. CS asked Mr. Juneja if they could go talk in the smoking pit and inside the club Mr. Juneja's demeanour was fine, but once Mr. Juneja exited the gated area, he started to say he wanted to fight the security staff.

- (b) Mr. Juneja did not appear sober since he smelled of alcohol and he had white powder residue around his nose and upper face area. CS believed Mr. Juneja was using cocaine.
- (c) Mr. Juneja left peacefully and once outside the gate CS told Mr. Juneja to have a good night and to go home. However, once outside the gate Mr. Juneja's demeanour completely changed. CS huddled with other security staff inside the smoking pit to try and steer attention away from Mr. Juneja. Mr. Juneja was calling the security staff homophobic slurs and was saying that he was going to fight them. Mr. Juneja came back towards the exit gate and tried to get back into the afterhours club.
- (d) At this point the security staff came through the gate and an altercation and fight ensued. During the fight Mr. Juneja said that he was going to "fuck us up" and was using homophobic slurs. CS saw WL being punched in the head by Mr. Juneja, but CS made no mention of this in his police statement, nor did he make any mention of the cocaine residue or the use of homophobic slurs. CS stated that he did not mention these particulars because they were in the police statement done by BC. The police statement was done at around 6:00 a.m. and CS indicated that he was tired and wanted to go home and so his police statement was only about six lines.

Police Attendance at the Afterhours Club

- 133. Constable AL gave evidence that he and his partner, Constable LM were on duty the morning of September 15, 2018 when they received a call shortly after 4:00 a.m. about an adult male being ejected from the afterhours club. The call was indicated as being a high priority because the security staff had to physically restrain the guest.
- 134. AL testified about the events at the afterhours club as follows:
 - (a) The two officers arrived at the back alley of the afterhours club where AL saw the security staff holding an individual on the ground, later confirmed to be Mr. Juneja.
 - (b) AL was informed by a member of the security staff that Mr. Juneja had assaulted one of the security staff and AL placed Mr. Juneja under arrest for assault.
 - (c) The two officers took Mr. Juneja to the police cruiser where he was placed in the vehicle. LM remained in the vehicle while AL took statements from a security staff, CR, who advised AL that Mr. Juneja had been ejected from the afterhours club because of an allegation that he had groped a woman. After being ejected Mr. Juneja tried to re-enter the premises at which time the security staff had to wrestle Mr. Juneja to the ground. CR also indicated to AL that Mr. Juneja had assaulted another security person, WL. AL spoke with WL, who indicated he had been punched in the head by Mr. Juneja, but that he was not interested in pressing any charges.
 - (d) After speaking with security staff AL returned to the police cruiser where LM advised him that Mr. Juneja had an outstanding warrant arising from a failure to pay fines. When Mr. Juneja was asked if he understood the nature of the

warrant, he replied “fuck off”. Mr. Juneja did however acknowledge that he understood his legal rights.

135. LM testified that he and AL received a call on September 15, 2018 about a male who had been ejected from the afterhours club because of an allegation of groping a female. The evidence of LM was as follows:
- (a) LM and AL arrived at the afterhours club around 4:13 a.m. and upon arrival saw a male being held down on the ground by security staff.
 - (b) Mr. Juneja appeared to be relieved to see the police and was calling for help. LM did not observe any injuries on anyone at the scene.
 - (c) LM took Mr. Juneja into custody and placed him in the police cruiser. After providing his name, Mr. Juneja indicated he was a criminal defence lawyer. After running Mr. Juneja’s name through police information checks it was discovered that Mr. Juneja had an outstanding Form 21 warrant for his arrest, which was due to the non-payment of a fine.
 - (d) Initially Mr. Juneja’s demeanour in the police cruiser was fine, but as time progressed Mr. Juneja became more belligerent. Mr. Juneja was upset about being taken into custody and was blaming the police officers. LM indicated that he explained the process a number of times to Mr. Juneja, but Mr. Juneja seemed not to comprehend why he was in custody.
136. Mr. Juneja admitted in his evidence to being “without question, definitely impaired” and that he had consumed 300 mg of edible cannabis and had also smoked cannabis. Mr. Juneja denied having consumed any other drugs that evening.

Altercation at the Police Station

137. Mr. Juneja was transported to the police station by LM and AL, and he informed the officers that he wanted to pay his outstanding fines by credit card. Unfortunately, it was about 5:00 a.m. and the building for payment by credit card was not open until 8:00 a.m.
138. At the station, AL did the physical search of Mr. Juneja and was in close proximity to Mr. Juneja. Despite this close proximity AL did not recall smelling any alcohol on Mr. Juneja. AL testified that he was fairly confident that he would have noted such a smell in his notes. AL did not recall during the search procedure what may have been discussed between LM and Mr. Juneja. During the video of the search, it did not appear that Mr. Juneja showed any indicia of impairment, such as a loss of balance. When questioned about this, AL indicated that some detainees can show in “some circumstances” a lack of balance while in certain postures (forehead against the wall, feet apart, hands behind back).
139. LM testified that soon after entering the police station Mr. Juneja was very confrontational and was blaming LM for his being at the police station. LM stated that Mr. Juneja was challenging him to a fight and swearing at him. This challenge was repeated later in the search area at the station. While being searched by AL, Mr. Juneja was asked by LM if he was on any medications or if he was injured. Mr. Juneja remained very belligerent. Once at the police station, LM testified that he could smell alcohol on

Mr. Juneja's breath and that he was slurring his words. LM concluded based on the aggressive behaviour of Mr. Juneja and his slurring of words that Mr. Juneja was under the influence of alcohol.

140. LM acknowledged that he carried two cell phones, one personal and one for work, but denied videotaping Mr. Juneja at any time. LM indicated that at the station Mr. Juneja seemed to become fixated on him and was blaming LM for Mr. Juneja being at the police station. LM indicated that Mr. Juneja had been challenging him to a fight, swearing and saying, "fuck you" to LM. At one point Mr. Juneja did say he was going to "kill" LM.
141. During the search of Mr. Juneja, AL testified that Mr. Juneja appeared to be very tense and was clenching his fists. Mr. Juneja was very hostile and verbally abusive to both officers. When being questioned Mr. Juneja would simply give a hostile reply of "fuck off". At one point Mr. Juneja challenged LM to a fight. While Mr. Juneja was being searched by AL, LM was completing a detainee log and asking questions of Mr. Juneja about medications or injuries. Mr. Juneja continued to respond by swearing at LM. This behaviour was shocking to LM given that by this time he knew that Mr. Juneja was a lawyer.
142. When LM asked Mr. Juneja if he was on any medication or had any injuries, which are standard questions, Mr. Juneja replied "fuck you". These questions seemed to provoke Mr. Juneja, who kept asking LM to fight.
143. At the station, Mr. Juneja became fixated on LM, swearing at him and challenging him to a fight. LM was surprised by Mr. Juneja's behaviour given that he was a lawyer and LM could not understand why Mr. Juneja was fixated upon him. Mr. Juneja continued with the "fuck you" comments.
144. When AL attempted to take Mr. Juneja to a holding cell, Mr. Juneja "became immediately physically resistive." AL went on to say that Mr. Juneja tensed up his arms, flexed his entire body and straightened out his legs in such a manner as to resist any forward movement. All the while Mr. Juneja was looking at LM and saying: "I'm going to kill you."
145. Mr. Juneja was ultimately physically restrained by AL, LM and two other officers: Sergeant JM and Staff Sergeant SD. AL had to knee Mr. Juneja a number of times in the back of his leg so as to collapse his knees. Eventually AL was able to apply handcuffs and place him into a holding cell. LM also applied one knee strike to Mr. Juneja to try and gain compliance.
146. Officer SC was the peace officer in charge of the holding cells during the early morning hours of September 15, 2018 and part of his duties were to monitor detainees. SC testified that the situation with Mr. Juneja was "remarkable" in that there was rarely a situation where police officers had to physically restrain a detainee. SC also stated that at no time did he see or hear LM provoking or taunting Mr. Juneja.
147. JM testified that he formed the opinion that Mr. Juneja was intoxicated based on a strong odour of alcohol, red eyes, unsteady gait and very belligerent behaviour.
148. Later that morning, Mr. Juneja was escorted by Officer WS from the police station to another building where Mr. Juneja could pay his fine.

Criminal Charge

149. Mr. Juneja was charged on October 11, 2018 with uttering a threat against LM. On October 11, 2018 Mr. Juneja met with Officer WP at the police headquarters to sign a Promise to Appear and an Undertaking. One of the conditions was that Mr. Juneja abstain from the possession and use of alcohol.
150. On November 14, 2019 Mr. Juneja received an absolute discharge in respect of the uttering threat charge. Mr. Juneja admitted at Provincial Court that he began taunting the security staff and challenging them to a fight.

Evidence of Mr. Juneja

151. In addition to the evidence outlined in paragraph 138, Mr. Juneja gave the following evidence:
 - (a) He attended at the afterhours club, which is a sober club that does not sell alcohol and as such it can stay open for longer hours. Mr. Juneja had been to licensed establishments earlier in the evening with friends, but he denies consuming alcohol. He does admit to using cannabis.
 - (b) The afterhours club has an extensive search procedure prior to entry and Mr. Juneja had been at this particular club about ten prior times. There was nothing noteworthy about the search and Mr. Juneja denies that he had cocaine on his nose or that the bouncer offered him a napkin.
 - (c) After about 45 minutes at the afterhours club, Mr. Juneja was approached by a male patron who told Mr. Juneja that if “you touch that woman again that way, I’m going break your face.” Mr. Juneja denies this allegation and noted that this person mistook him for someone else or was just looking for a fight. Mr. Juneja and this male person began exchanging heated words when a security staff person walked by, and the male patron told the staff person that Mr. Juneja had grabbed his wife. The staff person asked Mr. Juneja to leave, and Mr. Juneja said he would leave, but that he did not touch anyone.
 - (d) At this point Mr. Juneja walked peacefully to the rear exit where he walked out of the gate and onto the other side of the fenced smoking area. At this point the staff person, WL, said to Mr. Juneja: “Don’t come back, you molester”. Mr. Juneja then turned and said “What are you talking about? I didn’t molest anyone. What’s your problem?” At this point the head doorman CR, who had come into the fenced smoking area, said “What happened to leaving peacefully?” Mr. Juneja and WL continued to argue through the fence and the other staff were trying to get WL to go back inside, then the security staff huddled.
 - (e) WL then challenged Mr. Juneja to a fight, and Mr. Juneja replied in the positive. WL told Mr. Juneja “if you want to go, just open the gate”. Mr. Juneja proceeded to open the gate and the three security staff charged at him. Mr. Juneja backed up and before throwing the first punch he was surrounded. He admitted to striking WL, who fell to the ground. Mr. Juneja then grabbed WL and went to the ground, at which time the others were trying to stomp and hit Mr. Juneja. Staff person BC then joined the altercation and tried to stomp on Mr. Juneja’s head but

missed. At no time was Mr. Juneja ever pinned to the ground. Mr. Juneja denies using racial or homophobic slurs or threatening to “rape” anyone’s parents.

152. Mr. Juneja denies trying to kick out the police car window.
153. The police arrived and told Mr. Juneja he was under arrest for assault. While in the police cruiser, Officer LM discovered a warrant arising from an outstanding unpaid ticket from Hinton. This warrant could not be confirmed until the Hinton station opened later that morning.

Analysis and Decision: Citation 5

154. Regarding the security staff evidence, Mr. Juneja raises a number of factual arguments:
 - (a) That the security staff instigated the rear alley altercation by provoking him.
 - (b) That Mr. Juneja had hesitated in grabbing the gate, and that the security staff had the option of not coming forward and pushing him back into the alley.
 - (c) That Mr. Juneja denies trying to spit on the staff, threatening them or using homophobic slurs.
 - (d) That the security staff had colluded (this issue is addressed earlier in this Hearing Report).
 - (e) Mr. Juneja challenges the evidence of BC in that the police statement prepared by BC made no specific mention of either a white substance on Mr. Juneja’s nose and lip or that Mr. Juneja had spat at the security staff. The evidence from BC was that he did tell the police that he suspected cocaine use.
 - (f) Mr. Juneja challenges the evidence of CR regarding the allegations of homophobic slurs, spitting and kicking inside of the police cruiser as having been fabricated after the fact. None of these allegations were made by CR in his police statement. CR testified that he did not mention the slurs and spitting because did not want to see Mr. Juneja charged. As for the kicking inside the police cruiser, CR stated that since Mr. Juneja was now in police custody this was not a matter that he needed to address in his police statement.
 - (g) Mr. Juneja also challenged the evidence of CS on the basis that CS knew the exact location of the exterior roof camera and that the bouncers intentionally pushed Mr. Juneja far enough to be out of camera range. CS stated that it was Mr. Juneja who backed away as evidenced by the video; it was not due to the security staff pushing Mr. Juneja out of camera range. Further, CS did not mention cocaine residue in his police statement.
155. After consideration of all of the evidence presented, the Committee concludes that the evidence supports the conclusion that it was Mr. Juneja who initiated the altercation with the security staff. There is no audio to confirm what was being said in the area to the rear of the afterhours club, but the evidence of the security staff was consistent in stating that Mr. Juneja was the instigator and was belligerent in words and actions.

156. What also appears evident from the video of the altercation at the rear of the afterhours club is that after Mr. Juneja left the enclosed smoking area, then returned towards the gate, he appeared to be attempting to re-enter the smoking area. It was at this point that three of the security staff, who had been standing in a huddle just inside the gate, rushed forward through the gate pushing Mr. Juneja backwards out of camera range. Mr. Juneja, by his own admission, landed a number of punches on security staff person WL and he attempted to strike other staff during the scuffle. The evidence of the security staff is consistent with the video footage. Mr. Juneja's fists are cocked, and he appears to be trying to re-enter the fenced area. From an objective point of view, it appears clear that Mr. Juneja was trying to re-enter the fenced area. The argument that Mr. Juneja never intended to re-enter the premises is not consistent with the video footage or the evidence of the staff. Furthermore, Mr. Juneja had stated in his Statement of Facts in Provincial Court on November 14, 2019 that he had been walked to the exit door and that once there, Mr. Juneja grabbed the exit gate and began swinging his arms at the security staff.

Credibility

157. One of the key aspects of the arguments put forward by Mr. Juneja is that the security staff were not credible. Witness credibility can often be a challenging aspect for any trier of fact. In attempting to view the conflicting evidence between the security staff and Mr. Juneja, the Committee finds that where a conflict exists we accept the evidence of the security staff. In making this determination the Committee has considered the following:
- i. **Honesty:** The security staff appeared to be making a good faith effort to fully and accurately give evidence and there was nothing which would suggest that they were deliberately lying or failing to disclose relevant information.
 - ii. **Memory:** All of the security staff had provided police statements, which were created at the time of the altercation. All the witnesses indicated that they had a good recollection of the events and they were able to refresh their memories if needed.
 - iii. **Suggestibility:** There was nothing to indicate that any of the witnesses' memories had been distorted as a result of conversations with others.
 - iv. **Communication ability:** All the security staff understood the questions and they were able to clearly articulate what had happened.
 - v. **Compatibility:** The evidence from the security staff was largely compatible with the other witnesses. While not every security staff person necessarily heard or reported that Mr. Juneja made derogatory comments, that does not necessarily detract from the evidence of the witnesses who claim that those statements were made.
 - vi. **Demeanour:** The security staff all appeared confident in their testimony and there was nothing in their manner of speech or physical demeanour to suggest that they were not being honest.
 - vii. **Consistency:** The evidence from the witnesses was consistent from one witness to the others. While there were some inconsistencies in the police statements,

these inconsistencies were not of such a degree as to amount to a finding of collusion or dishonesty. It is not surprising that the witnesses do not recall every detail of the evening nor that their recollections may differ in some respects, but the Committee did not find any discrepancies which would lead it to reject or place less weight on the evidence of these witnesses.

- viii. Sense: The evidence from the security staff made sense from the perspective of what transpired on the video. On the other hand, the evidence from Mr. Juneja that he was provoked is not consistent with that video evidence.
 - ix. Reputation: There was nothing in the evidence to suggest that any of the security staff had a reputation for dishonesty.
158. Furthermore, the Committee is of the view that the conduct of the security staff is not the issue; the issue is the behaviour of Mr. Juneja. It does not matter whether the security staff were being verbally provocative. Mr. Juneja needed to simply walk away regardless of any jeers. Mr. Juneja needed to conduct himself in a professional manner and disengage from any further communications with the staff. Mr. Juneja had every opportunity to diffuse the situation by simply leaving. He chose not to do so and in staying on site behaved poorly towards both the security staff and the police officers.
159. Mr. Juneja's argument that he was taunted, as if in some school yard clash, by the security staff person, WL, into a fight is no excuse for his behaviour. The response is childish to say the least. Furthermore, the argument that the security staff could have "easily pulled the gate shut" rather than charging at Mr. Juneja also is not relevant. The fact that the security staff could have done so does not discredit their version of the events. It is not the behaviour of the security staff that concerns the Committee, but rather it is the conduct of Mr. Juneja.
160. The incident at the police station is well described by both AL and LM, along with the corroborating video footage. It is clear that following the search Mr. Juneja was actively resisting the police officers when they tried to place him into a holding cell. The Committee sees no reason not to accept the evidence of the police officers.

Legal Issues

161. Mr. Juneja has raised certain legal issues in his Written Argument, in particular:
- (a) What is the ability of a professional regulatory body to regulate a member's private life; more particularly, that there is no nexus between the events in question and the duties of Mr. Juneja as a lawyer.
 - (b) Should an adverse inference be drawn against the LSA for their failure to call four other witnesses: RL (security staff person), Staff Sergeant SD, DC (former LSA employee) and MC (former LSA employee)?
 - (c) What is the appropriate test for collusion, if established, on the credibility of witnesses?

Regulation of Private Conduct

162. Section 49 of the *Act* states:

49(1) For the purposes of this Act any conduct or a member, arising from incompetence or otherwise, that

(a) is compatible with the best interests of the public or 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. [emphasis added]

163. Of further assistance to the Committee is section 2.1-1 of the Code, which states:

A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

164. The ability of a professional regulatory body to regulate a member's private life was addressed by the Alberta Court of Appeal in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98. In this case the principal concept was stated by the Court 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 misconduct. 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.

165. It is certainly axiomatic that a lawyer's personal life outside their professional activities can be subject to the disciplinary process. While this is certainly the case, it is fair to say that being part of the legal profession will necessarily mean that a lawyer will have a diminished expectation of privacy. Lawyers are ultimately required to account for their conduct to the public and as stated in the Code, commentary 7.3-1(3): "...lawyers should aspire to the highest standards of behaviour at all times and not just when acting as lawyers."

166. The more fundamental issue is where to draw the draw line between the competing interests of a member's private life and when the private behaviour becomes conduct deserving of sanction. The *Act* provides us with two factors that need to be considered:

- (1) Is the conduct incompatible with the best interests of the public?
- (2) Does the conduct tend to harm the standing of the legal profession?

167. Our investigation of the cases starts with *Erdmann v. Complaints Inquiry Committee of Alberta*, 2013 ABCA 147, and the following passage at paragraphs 28-29:

The test for professional misconduct is set out in *Ratsoy v Architectural Institute of British Columbia* at para 11, where Taylor J endorsed the following reasons of Lord Parker CJ, speaking for a Divisional Court of the Queen's Bench Division in *Marten v Royal College of Veterinary Surgeons*, [1965] 1 All ER 949 at 953:

... If the conduct, however, though reprehensible in anyone is in the case of the professional man so much more reprehensible as to be defined as disgraceful, it seems to me that it may, depending on the circumstances, amount to conduct disgraceful to him in a professional respect in the sense that it tends to bring disgrace on the profession which he practices.

Taylor J went on to say in para.11:

I would paraphrase those words by saying that reprehensible conduct outside actual practice of the profession may render a professional person liable to disciplinary action if it can be said to be significantly more reprehensible in someone of his particular profession than in the case of others.

168. The “*Ratsoy test*”, as described in *Erdmann*, was recently addressed in the recent decision by the Saskatchewan Court of Appeal in *Strom v. Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 where the court stated at paragraph 89:

The phrase “reprehensible in anyone” – which I take to mean conduct that would be reprehensible regardless of whether the person charged was a professional – has occasionally been referred to in decisions relating to off-duty conduct. However, I do not agree the jurisprudence reflects a general principle that conduct can constitute professional misconduct only if it is found to be reprehensible in this sense. Rather, off-duty conduct may be found to be professional misconduct if there is a sufficient nexus or relationship of the appropriate kind between the personal conduct and the profession to engage the regulator’s obligation to promote and protect the public interest. More specifically, I would state the issue this way: was the impugned conduct such that it would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct? (See *The Regulation of Professions in Canada*, vol 2 at 13.4.)

169. In the *Strom* case the court articulated the central question as whether there is a nexus between the off-duty conduct and the profession that demonstrates a sufficiently negative impact on the profession or the public interest. The “nexus” concept was also addressed by the Alberta Court of Appeal in the *Yee* case in the quote above at paragraph 166 of this Hearing Report.

170. The Court in the *Strom* case went on to outline certain factors to be considered at paragraph 90:

Indeed, I read the passages in *Erdmann* and *Ratsoy* relied on by Ms. Strom as making this very point, rather than that proposed by Ms. Strom. Although they refer to conduct being “reprehensible in anyone”, they do so to make the point that reprehensible conduct may bring disgrace to the profession due to the relationship between that conduct and the characteristics considered to be important for those in the profession. It is for that reason that factors such as the nature of the profession; the relationship of the misconduct to the work of the profession or the personal characteristics considered necessary to practice the profession; and whether the person charged is identified or purported to act as a member of that profession are relevant. [Emphasis added]

171. The factors listed by the court in the *Strom* case (which we do not take as being exhaustive) require that we engage in a contextual analysis to determine if private conduct constitutes conduct deserving of sanction. In the framework of section 49(1) of the *Act*, we would summarize the relevant circumstances and factors (recognizing that there is some overlap of factors) as follows:

- I Is the conduct incompatible with the best interests of the public?
 - (a) Does the misconduct impair the ability of the individual to perform as a member of the profession?
 - (b) How closely connected is the misconduct to the practice of the profession?
- II Does the misconduct engage the broader public interest?
 - (c) Does the conduct negatively reflect on the characteristics required to be a competent and ethical member of the profession?
 - (d) Does the conduct tend to harm the standing or reputation of the legal profession?
 - (e) What is the nature of the profession and what is the nature of the misconduct?
 - (f) Is the conduct more reprehensible by a member of the profession in the case of others?
 - (g) Was the individual identified as a member of the profession? Did they purport to act as a member of the profession?
 - (h) Would the misconduct impair a client’s trust in the profession?

172. In considering these factors and applying a contextual analysis the Committee is of the view that the conduct of Mr. Juneja falls within conduct that is deserving of sanction for the following reasons:

- (a) The conduct would reasonably tend to harm the standing or reputation of the legal profession. A reasonable person, when viewing these circumstances objectively, would be left with an almost certain negative view of lawyers.

- (b) A client would correspondingly find their trust in the profession impaired by the behaviour of Mr. Juneja.
- (c) Mr. Juneja went out of his way to tell everyone that he was a lawyer, which objectively paints a more negative picture of his conduct.
- (d) The behaviour also reflects to some degree on the characteristics required to be a competent and ethical member of the profession. Competent and professional lawyers simply do not engage in early morning brawls at night clubs, and even more unbelievably do not become engaged in a fight with the police.

Adverse Inference

173. In *Singh v. Reddy*, 2019 BCCA 79, the British Columbia Court of Appeal stated the legal principles regarding drawing an adverse inference at paragraph 9:

As noted in *Rohl*, it is now generally accepted that that court is not *required* as a matter of law to draw an adverse inference where a party fails to call a witness. Thus in *Witnesses* (looseleaf), A.W. Mewett and P.J. Sankoff write:

A considerable number of cases reinforce the view that there is no such thing as a “mandatory adverse inference” to be drawn where a party fails to call a witness. Rather, the question of whether to make such an inference seems to depend upon specific circumstances, in particular whether:

- There is a legitimate explanation for the failure to call the witness;
- The witness is within the “exclusive control” of the party, and is not “equally available to both parties”; and
- The witness has material evidence to provide; and
- The witness is the only person or the best person who can provide the evidence.

174. The Committee finds that no adverse inference should be drawn against the LSA for its failure to call the stated four other witnesses: RL (security staff person), Staff Sergeant SD, DC (former LSA employee) and MC (former LSA employee). Firstly, none of these witnesses were in the exclusive control of the LSA and Mr. Juneja could have certainly called any one of them. Furthermore, it does not reasonably appear that any one of these witnesses could have added anything further to the evidence and most certainly were not the only persons or the best person to provide evidence.

Decision

175. Based on the evidence, the Committee finds as follows:

- (a) On September 15, 2018 Mr. Juneja, while at an afterhours club, instigated and engaged in a physical altercation with security staff. During this altercation Mr. Juneja swore at the staff, threatened to harm them, used homophobic slurs and punched one of them several times.
- (b) While in custody at the police station on September 15, 2021, Mr. Juneja resisted attempts to place him in a holding cell, resulting in a physical altercation with

police officers. During this altercation Mr. Juneja swore repeatedly at the officers and threatened to harm at least one of the officers.

- (c) By his own admission, at some point during the evening of September 14, 2018, or the early hours of September 15, 2018 Mr. Juneja consumed cannabis. At this particular date cannabis was not yet legalized and there was no medical purpose for the consumption of the cannabis.
- (d) Mr. Juneja has admitted to consuming cannabis during the period of October 17, 2018 to October 17, 2019 in the form of edibles.

176. The Committee therefore finds that Mr. Juneja has conducted himself in a manner that has brought discredit to the profession contrary to section 2.1-1 of the Code and as such that conduct is deserving of sanction.

Citation 6: Lack of Candour

Particulars: Citation 6

177. This citation alleges that Mr. Juneja failed to be candid with the LSA in that when informing the LSA about being criminally charged, Mr. Juneja failed to inform the LSA that he was the instigator of the altercation with the afterhours club staff and that he further failed to advise the LSA about the altercation with the police officers.

Evidence: Citation 6

178. The Committee heard evidence from SE, a former LSA employee, who testified to the following:

- (a) On October 28, 2018 Mr. Juneja informed the LSA by letter that he had been charged with uttering threats, resisting a police officer and disturbing the peace.
- (b) This initial letter provided no particulars and SE wrote to Mr. Juneja on October 28, 2018 informing Mr. Juneja that the LSA required a written report outlining the circumstances of events leading to the charges.
- (c) Near the end of November 2018, SE became aware of an article published online by [...] about a confrontation and altercation involving Mr. Juneja which SE assumed might be related to the three criminal charges Mr. Juneja was facing.
- (d) Mr. Juneja replied to the LSA by letter on November 30, 2018 and in that letter Mr. Juneja addressed the incident at the afterhours club in part as follows:

Once we got to the exit, the security member commented on how I should not be touching girls. I said again I did no such thing. At this time I was surrounded by three security personnel, who began closing in on me. I was attacked and fought back in self-defence. I was in the course of defending myself when the police arrived.

- (e) Regarding the conflict at the police station, Mr. Juneja informed the LSA in part as follows:

There were two officers involved in transporting me to the downtown detachment; one was a younger officer the other was an older officer. The older officer started asking me why I was going around touching girls in a club. I told him repeatedly, that I did no such thing. I would never engage in that type of activity. He persisted and an argument escalated. I definitely raised my voice as did he, and insults were exchanged. I was released hours later when the Edmonton Police Service received the warrants from the R.C.M.P. detachment in Edson, and I paid the ticket.

- (f) SE stated that the November 30, 2018 letter did not address the concerns that the LSA had regarding the allegation in the article about Mr. Juneja being intoxicated. SE then requested by correspondence further information from Mr. Juneja, but none was every provided. However, no evidence was tendered by the LSA of the actual correspondence.

Analysis and Decision: Citation 6

179. The position of Mr. Juneja regarding citation 6 can be summarized as follows:
- (a) That the altercation at the police station was not the basis for the charge but rather the uttering threats charge arose when Mr. Juneja challenged the police officer.
 - (b) The resisting arrest charge resulting from the police attempts to move Mr. Juneja towards the police cells and not afterwards.
 - (c) The provision of the Crown disclosure to the LSA would have been in conflict with case authority that provides that there is an implied undertaking to the Court by an accused not to use such disclosure for any purpose other than defending the criminal charges.
180. Rule 105 of the Rules of the LSA (Rules) requires that a lawyer who is criminally charged “shall within a reasonable time after the charge is laid or the investigation commences, give a written notice to the Executive Director containing the particulars of the charge or investigation, and forthwith notify the Executive Director of the disposition of the charge or investigation and any agreement arising out of the charge or investigation.”
181. Mr. Juneja informed the LSA he was attacked. The totality of the evidence leads to the conclusion however that it was Mr. Juneja who instigated the altercation at the afterhours club.
182. The LSA argues that Mr. Juneja admitted in Provincial Court in his criminal proceedings that he instigated the fight. The Committee cannot speculate as to what negotiations or discussions took place during the criminal process, but we are not prepared to connect the admissions at the criminal sentencing to a failure to provide particulars.
183. While SE indicated he sought further disclosure in writing, no actual letter was tendered into evidence. The particulars of this citation deal only with the response of Mr. Juneja on November 30, 2018 and as such do not directly refer to a failure by Mr. Juneja to respond to any request for further particulars. As such the Committee does not rely upon

any of the evidence of SE regarding a subsequent written request for further particulars and disclosure.

184. In respect of the incident at the police station, Mr. Juneja makes no mention whatsoever about the physical altercation with the police. In fact, Mr. Juneja stated the contrary in his reply letter of November 30, 2018 when he stated that he “completely cooperated”. Under cross examination Mr. Juneja admitted that there was nothing in his November 30, 2018 letter regarding a physical altercation with the police or any description of what happened at the police station.

185. The Committee finds the explanation given by Mr. Juneja lacking in credibility, which evidence given under cross examination about the November 30, 2018 letter was as follows:

Q Where does it say that I was – use the wording you want, that you had a physical interaction with two police officers and a peace officer that evening that resulted in me getting my head banged and the back of my head knocked, that’s not in there. There’s no description whatsoever of what happened in the cells, correct?

A That’s correct.

Q And you definitely knew, though, by this time, that you had gotten into an altercation with the Edmonton Police Service, correct?

A I knew there was a altercation, but I didn’t think that this was the basis of the charge. I believe the uttering threats was when we were in EPS holding where Corporal [SC] intervened and where I said it was a challenge and not a threat, and I believe the arrest happened that second afterwards when they were trying to move me towards the cell. After that, I don’t think it related to the charge. I did see the video at that point, and I did not have disclosure, as I indicated.

186. The rationale of Mr. Juneja for failing to inform the LSA about the altercation and scuffle with the police is an attempt to create a fine and unsupportable distinction between the nature of the charges and the actual events. As noted above under citation 4, candour requires a reasonable person to disclose all salient and important information. It is an objective test. Candour requires openness and forthrightness. Incorrect statements, or omissions of salient information, exhibits a lack of candour.

187. The Committee finds that Mr. Juneja lacked candour when:

- (a) he informed the LSA about being criminally charged but failed to admit that he had a physical altercation with the police on September 15, 2018;
- (b) he failed to inform the LSA that he was the instigator of the altercation with the afterhours club staff; and
- (c) he further failed to inform the LSA about the altercation with the police officers.

188. Section 7.1-1 of the Code states: A lawyer must reply promptly and completely to any communication from the Society. The failure to be candid is a breach of section 7.1-1 of the Code. Aside from this breach, a lack of candour is incompatible with the best interests of the members of the LSA and is conduct deserving of sanction.

Concluding Matters

189. In conclusion, guilt on citations 1, 2, 3, 4, 5 and 6 are proven on a balance of probabilities and as such the conduct is deserving of sanction.
190. The parties did not speak to sanction. Accordingly, a sanction hearing will be set to deal with remaining matters, including sanction, costs, notices and any other outstanding issues.
191. The exhibits and other hearing materials, transcripts, and this Hearing Report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee. However, redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege, and to reflect the orders of the Committee set out in this Hearing Report at paragraphs 8 and 9 (Rule 98(3)).

Dated April 13, 2022.

Bud Melnyk, Q.C. – Chair

Lou Cusano, Q.C. – Bencher

Edith Kloberdanz – Public Adjudicator