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 NORMAN ANDERSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Angela Saccomani, KC – Chair
Michael Brodrick – Adjudicator
Louise Wasylenko – Lay Bencher

Appearances
Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
James Butlin, KC – Counsel for Norman Anderson

Hearing Date
September 12, 2024

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Mr. Anderson was admitted to the Alberta Bar in 1990 and his practice since was in the areas of civil litigation, employment law and insolvency. At all material times he practiced at SNC LLP and its predecessors (Firm) and his status was “active/practicing”. He resides in Calgary.

2. On February 13, 2018, the LSA received a letter pursuant to Rule 105 of the Rules of the LSA (Rules) from Mr. Anderson’s counsel reporting that he had been named a Respondent in Alberta Securities Commission (ASC) proceedings.

3. The LSA conducted an investigation during which Mr. Anderson was interviewed, provided written responses and gave undertakings regarding his practice. Upon completion of the investigation, the LSA referred the matter to the Conduct Committee which, on March 16, 2021 directed four citations to hearing.

4. On July 4, 2022, by joint submission of LSA and Mr. Anderson to the Pre-Hearing Conference Chair, one citation (citation 4) was dismissed leaving citations 1-3 to be dealt with at the hearing.

5. On September 12, 2024, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Anderson based on citations 1-3.

6. At the commencement of the hearing, the LSA and Mr. Anderson jointly requested an amendment to citation 1 and the withdrawal of citation 2. The parties also advised that, while the wording of citation 3 would not change, the related particulars be amended.

7. The Committee permitted the amendment to citation 1 and to the particulars of citation 3. Accordingly, the following two citations were before the Committee to consider:

> **Citation 1**
>
> It is alleged that Norman Anderson failed to take proper or sufficient steps to identify if his client JC through his control of BF Inc., LCM Inc., LGM S.A., and UIS LLC, was engaging or participating in an act, practice, or course of conduct relating to BF Inc. securities that resulted in, or contributed to, an artificial price for those securities, and that such conduct is deserving of sanction.
>
> **Citation 3**
>
> It is alleged that Norman Anderson issued accounts to his client from his professional corporation that improperly identified the legal services and failed to distinguish between legal fees and disbursements and that such conduct is deserving of sanction.

8. No witnesses were called by either counsel.

9. After reviewing all of the evidence and exhibits, and hearing submissions by LSA counsel and counsel for Mr. Anderson, for the reasons set out below, the Committee accepted Mr. Anderson's admission of guilt of conduct deserving sanction on citations 1 and 3 pursuant to section 60 of the *Legal Profession Act (Act).*

10. Immediately following the merits phase of the hearing, the Committee continued the hearing on sanction. A joint submission on sanction was submitted by the parties which was accepted by the Committee. Accordingly, the Committee ordered Mr. Anderson be suspended for one month, commencing December 15, 2024.

11. The remaining matter of costs was contested as between the parties. The Committee reserved its decision on costs at the hearing and, after careful consideration, orders Mr. Anderson to pay costs of $52,302.83 by December 31, 2026.

Preliminary Matters

12. On Monday, September 9, 2024, LSA counsel and counsel for Mr. Anderson made a joint request that the hearing be adjourned to start Tuesday, September 10, 2024. The Committee considered the factors for an adjournment request as set out at paragraph 123 of the Pre-Hearing and Hearing Guideline (Guideline) and were persuaded to grant the adjournment.

13. A second joint request that the start of the hearing be further adjourned to Thursday, September 12, 2024 was made. The Committee again considered paragraph 123 of the Guideline and again granted the adjournment.

14. There were no objections to the constitution of the Committee or its jurisdiction.

15. As to whether a private hearing was sought, the Committee heard submissions by LSA counsel regarding whether an individual named, together with Mr. Anderson, in a letter dated August 20, 2024 providing a Private Hearing Application Notice and whose email was returned, undelivered, was an interested person pursuant to section 78(2) of the *Act* and if so, whether further notice was required. LSA counsel submitted no further notice was required unless the Committee so directed. No objection to the motion was made by counsel for Mr. Anderson. The Committee agreed that the individual was not deemed to be an interested party and was satisfied that the requirements of section 78(2) of the *Act* were met. As such, a public hearing into the conduct of the member proceeded.

16. LSA counsel and Mr. Anderson's counsel made a joint motion pursuant to section 65 of the *Act* to amend the wording of citation 1 and the particulars related to citation 3. The Committee reviewed all the evidence including the Statement of Admitted Facts and Exhibits, and the Admissions made by the member and signed September 10, 2024, and accepted the amendments to citations 1 and 3. The parties jointly advised there was no evidence regarding citation 2 and that the citation would be withdrawn. The Committee acknowledges and accepts the submissions of the parties regarding citation 2 and permitted its withdrawal.

Merits

<u>Citation 1</u>

17. Commencing between 2002 to 2006, the Firm began providing legal services including tax and corporate work to JC and JC's BW Inc. and to conduct and defend Alberta litigation. In September 2010, the Firm incorporated MI Ltd. in Alberta and acted as its registered office. JC was the sole director of MI Ltd. and a Belize corporation, NAI Ltd., was its sole shareholder.

18. In 2010, the Firm was retained to represent BW Inc. in *Companies' Creditors Arrangement Act* proceedings (*CCAA*). From June 2010 to August 2010, Mr. Anderson worked with others in the Firm on the *CCAA* proceedings and issued and signed invoices for services to BW Inc. for a total of $62,967.70. In August 2010, BW Inc. was placed into receivership and while not initially paid, the Firm's invoices were paid in or after April 2011.

19. In December 2010 JC acquired a controlling interest in the shareholdings of a Nevada-based company whose name changed in 2012 from GGR Inc. to BF Inc. to reflect a change in the corporation's business from that of a mining company to a carbon-offsets marketing company.

20. In January 2011, JC informed Mr. Anderson of an entity in Belize that offered incorporation of offshore international business corporations (IBC) and supplied nominal directors and officers (IPC Corporate Services LLC) (IPC). Upon instructions from JC, Mr. Anderson delivered an application for the incorporation of "LCM Inc." to IPC and provided his own contact information, some particulars of the Firm and post-incorporation, signed as its President. LCM Inc. was intended to be used as asset protection for JC's future investments.

21. In July 2011, the member received an invoice from IPC for fees associated with the incorporation of LCM Inc. which JC paid. Mr. Anderson completed and signed a Client Identity Verification Form as the beneficial owner of an account for LCM Inc. and was instructed by JC and did register LCM Inc. with a brokerage firm, LGM S.A. of Panama City, Panama. JC exercised control over LCM Inc.

22. In July 2013, JC instructed Mr. Anderson to complete an application to open a trading account for LCM Inc. with UIS LLC of Belize. UIC LLC was a securities trading brokerage that JC told Mr. Anderson he controlled and operated. Mr. Anderson signed documents as President of LCM Inc. to open LCM Inc.'s trading account with UIC LLC and authorization as UIC LLC's agent to buy or sell securities in the UIC LLC account. There was no evidence that Mr. Anderson ever traded in securities on behalf of LCM Inc. nor in the UIC LLC trading account.

23. LSA counsel and Mr. Anderson rely on the decision of the ASC *Re Bluforest Inc.*, 2020 ABASC 138, for its findings on merits against JC and not Mr. Anderson, and the ASC decision *Re Bluforest Inc.,* 2021 ABASC 25, on sanction against JC and not Mr. Anderson.

<u>Citation 3</u>

24. Mr. Anderson spoke to a Barrister about his concern that he had been asked to do legal work for JC and his companies over several months regarding which the companies could not likely pay but services for which Mr. Anderson insisted on being paid. No funds

were in trust or expected to be in trust for payment of these services. The Barrister suggested to Mr. Anderson that a form of billing practise he used was to render an account although the work remained incomplete and to quote a set fee rather than one based on hours kept. Mr. Anderson followed that suggestion.

25. By cover email dated February 4, 2011, Mr. Anderson attached four statements of account all dated February 1, 2011, from his Professional Corporation to four of JC's companies as directed by JC listing only "To: Services rendered, as agreed" with no distinction made between legal fees and disbursements. The invoices were addressed to GGR Inc. in the amount of $59,100.00, QE Corp. in the amount of $55,400.00, GRE Inc. in the amount of $48,300.00 and B Holdings Inc. in the amount of $53,700.00 respectively.

26. Mr. Anderson states that none of the Statements of Account were ever paid.

Decision on Merits

27. With respect to citation 1, having heard the submission of both counsel and having considered the evidence, the Committee accepts Mr. Anderson's admission of guilt of conduct that is deserving of sanction and accordingly that section 49 and section 60 of the *Act* criteria are satisfied.

28. Both LSA counsel and counsel for Mr. Anderson agree that Mr. Anderson has admitted to the same conduct and extent as agreed to and described in the ASC Settlement Agreement and Undertaking made on March 8, 2019.

29. With respect to citation 3 and having heard the submission of counsel and considered the evidence before us, the Committee accepts Mr. Anderson's admission of guilt of conduct that is deserving of sanction and that the criteria set out in section 49 and section 60 of the *Act* are satisfied.

Sanction

Joint Submission on Sanction

30. LSA counsel and counsel for Mr. Anderson made a joint submission on sanction - that the member be suspended for one month, commencing December 15, 2024.

31. The Guideline provides guidance on the purpose of a sanction. An appropriate sanction will ensure the protection of the public, be purposeful, provide specific deterrence of the lawyer, general deterrence of other lawyers, a denunciation of misconduct, protect the public and ensure governability by the LSA of its members. [1]

[1] Guideline, at paragraphs 185-187

32. In *R. v. Anthony-Cook* 2016 SCC 43 [2016] 2 S.C.R 204, the Supreme Court of Canada confirmed that the proper test for assessing the acceptability of a joint submission is the "public interest test". A judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. [2] A joint submission should not be rejected lightly unless the submission is so unhinged that its acceptance would be viewed as a breakdown of the proper functioning of the justice system. The public interest sets an "undeniably high threshold" for good reason.[3] A lower threshold would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.[4]

33. The Guideline sets out that where a joint submission on sanction is presented, the parties require a high degree of certainty that the sanction recommendation will be accepted and as such, a hearing committee must give significant deference to it. However, a hearing committee is not bound by it and if the public interest test is met, the joint submission can be rejected.

34. The Guideline enumerates the benefits of a joint submission at paragraph 209:

> A joint submission benefits both the lawyer and the Law Society in the following ways:
>
> a. it is a more efficient means of concluding the proceedings, saving time, costs and resources;
>
> b. it provides the parties with certainty regarding the outcome, particularly in cases where either party faces challenging evidentiary issues;
>
> c. complainants and other witnesses are spared from having to testify publicly;
>
> d. complainants may perceive the lawyer's Admission as an important acknowledgment of responsibility or an expression of remorse;
>
> e. an Admission and a joint submission on sanction provides the lawyer with an opportunity to demonstrate accountability for their conduct.

<u>Decision on Sanction</u>

35. The Committee accepts the joint submission on sanction of a one-month suspension for the period identified. The Committee does note the suspension is at the low end of the

[2] *Anthony-Cook*, at paragraph 32
[3] *Anthony-Cook*, at paragraph 34
[4] *Anthony-Cook*, at paragraph 42

range. However, having heard from both counsel and considering the work involved arriving at a joint submission, and the admissions of the member in this hearing and in the ASC Settlement Agreement and Undertaking made on March 8, 2019, the Committee considers the sanction to be reasonable.

36. In accepting the joint submission, the Committee has confidence the sanction serves to ensure the public is protected from acts of professional misconduct and protects the public's confidence in the integrity of the profession.[5]

Costs

37. The parties do not agree on costs.

Submissions of the parties

38. LSA counsel referred to *LSA v Galbraith,* 2024 ABLS 13 for an overview of recent and applicable Alberta Court of Appeal decisions on costs in matters of professional regulation. Counsel also noted *Jinnah v. Alberta Dental Association and College,* 2022 ABCA 336 wherein the Alberta Court of Appeal held the profession as a whole, benefits from the privilege of self-regulation and as such should bear the costs with certain exceptions. LSA Counsel also points to *Dr. Ignacio Tan III v. Alberta Veterinary Medical Association*, 2022 ABCA 221 (*Tan 2022*) in which the Court referred to *Alsaadi v College of Pharmacy*, 2021 ABCA 313 noting *Jinnah* had also cited that decision. LSA counsel submitted that there are exceptions in the matter at hand.

39. LSA counsel submitted that the Estimated Statement of Costs is reasonable. He noted that a one-month suspension is for serious conduct and that the first exception set out in *Jinnah* applies. Considering all the factors, LSA counsel asked the Committee panel to find the LSA investigation costs of $31,430.50 and LSA counsel preparation and hearing costs of $36,815.63 are also reasonable.

40. LSA counsel advised the Committee that during the LSA investigation, a large amount of data, estimated at approximately 1,200 pages, was collected and had to be reviewed. The LSA had a different way to store the data and did not have full capacity which delayed the investigation. LSA counsel pointed to 16 pre-hearing conferences, 12 versions of the Agreed Statements of Fact prepared and reviewed before the Statement of Admitted Facts and Exhibits was finally agreed to on August 20, 2024, all the preparatory work preparing the exhibit books, preparing cross examination of another witness, preliminary hearing applications served as late as the week before the hearing was to begin and doing further and better particulars with briefs. The LSA withdrew a fourth citation to streamline the hearing. All told, LSA counsel argues the investigation costs are reasonable and the LSA counsel costs are reasonable given the hourly rate of

[5] Guideline, at paragraph 185

$125.00 and in the context of a hearing that was scheduled for 5 days. LSA acknowledged the issue of costs is within the discretion of the Committee and that costs must be determined on a rational and reasonable basis.

41. In response, counsel for Mr. Anderson referred to *LSA v. Farrell*, 2024 ABLS11 which cites the comments of Justice Khullar (as she then was) in *Alsaadi*[6] wherein she confirmed that the Court's approach to costs in the disciplinary process of self-regulated professions was set out in *K.C. v. College of Physical Therapists of Alberta,* 1999 ABCA 253*.* The member queries whether a cost award against a member is warranted at all but does agree costs are discretionary.

42. Mr. Anderson's counsel pointed to certain facts in support of his argument. He noted that Mr. Anderson went through the ASC proceedings and was required to pay $90,000[7]. In this LSA process he states that his client self-reported, disclosed he did not take appropriate steps to identify if his client was contributing to an artificial price for those securities, was examined exhaustively by the LSA and gave exhaustive answers. Counsel further posited that the agreement reached with the LSA was no different to the agreement entered with the ASC. The investigation by the LSA did not further implicate or inculpate Mr. Anderson.

43. Mr. Anderson's counsel argued that the LSA is obligated to investigate and, even with a protracted investigation and no further determination of guilt, the LSA should bear the costs.

44. Counsel for Mr. Anderson drew the Committee's attention to *LSA v. Zang,* 2024 ABLS 18 in further support that these costs should not be paid. In that case, although the matter was more serious and Mr. Zang was sanctioned with a 2-to-4-month suspension, the estimated costs were about $47,000.00. Counsel argues that in comparison, there was no evidence that Mr. Anderson was implicated in trading or a pump and dump scheme. He has paid for his actions by being sentenced in the ASC proceedings. The matter has been going on for 6 years.

45. Counsel for Mr. Anderson submitted that there should be no costs, or at least significantly reduced costs to no more than a portion of the LSA counsel fee in recognition that some time was required to organize and get to resolution.

46. In the result, Mr. Anderson's counsel submitted that as there is no more culpability, the LSA is not entitled to its costs.

47. In rebuttal, LSA counsel cited section 72 (2)(c) of the *Act* as authority to award costs. As the investigation resulted in a plea of guilt by Mr. Anderson, those costs should be paid

[6] Alsaadi, at paragraph 94

[7] Total $90,000 paid, with monetary settlement of $70,000 and $20,000 in costs.

in the very least. Further, with respect to *Zang*, that hearing committee did not find any further misconduct but ordered the full costs. Of the citations and particulars before this panel, the LSA was prepared to commence the hearing on the first day of the originally scheduled hearing. The LSA had not been approached until recently with respect to a settlement and had the parties settled earlier, costs would have been lower. The LSA did not concede it would not have been able to prove their case but as there was uncertainty on all sides, a settlement is a better outcome. In the result, LSA counsel posited there is an entitlement to costs which are appropriate in the amount set out in the Estimated Statement of Costs.

Analysis on Costs

48. This Committee has reviewed relevant authorities and caselaw and has considered submissions of the parties.

49. The Committee derives its authority to order costs pursuant to the section 72(2) of the *Act* and Rule 99 of the Rules. Section 72(2) reads:

> **72(2)** In addition to an order under subsection (1), the Hearing Committee may make one or more of the following orders:
>
> (c) an order requiring the payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order.

50. In *Jinnah,* the Alberta Court of Appeal heard a dentist's appeal of a decision of its College's appeal panel and upheld the appeal in part but ordered that the costs award be set aside and returned to the appeal panel for reconsideration. The Court determined that because the profession benefits from self-regulation, adjudging a member to have committed a misconduct sends a message to the public that the regulator protects the public's interest thereby increasing the public's confidence to utilize professional services. Thus, costs are an inevitable part of self-regulation.[8] And while it was recognized that a member who has committed misconduct is distinguishable from those members who have not, that is not in and of itself enough as a general principle to make the member pay a significant portion unless there are one or more compelling reasons to do so.[9] Such a compelling reason is found in four scenarios: a member has committed serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators or has engaged in hearing misconduct.

51. In the first scenario, serious unprofessional misconduct is described as the performance of services in a manner that is completely unacceptable, comprises unprofessional

[8] *Jinnah,* at paragraphs 134-139.
[9] *Jinnah,* at paragraph 138.

conduct or is a marked departure from the ordinary standard of care.[10] In the second scenario, a serial offender is described as one who engages in professional misconduct on two or more occasions.[11] A member who fails to cooperate with investigators and forces more resources than necessary to ascertain the facts related to a complaint will fall into the third scenario.[12] And in the fourth scenario a member who is engaged in hearing misconduct will be one who unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable.[13]

52. In any such scenario, a member can justifiably be ordered to indemnify its regulator for a substantial portion or all its expenses in prosecuting the claim. The member should expect to pay costs that completely or largely indemnity the college.[14]

53. In *Jinnah* at paragraphs 129 and 130, in holding that a hearing tribunal and an appeal panel must justify a decision to award costs, the Court also relied in part on *Alsaadi* as follows:

> This Court in *K.C. v. College of Physical Therapists of Alberta* held that the College must consider factors "in addition to success or failure" including "the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts" when determining whether to impose costs and in what amount.
>
> In *Alsaadi v. Alberta College of Pharmacy*, Justice Khullar pointed to many of the problems with a default approach to calculating costs that often imposes a very high amount on a disciplined professional. Justice Khullar favored a more principled approach to calculating costs:
>
> > A more deliberate approach to calculating the expenses that will be payable is necessary. Factors such as those described in *KC* should be kept in mind. A hearing tribunal should first consider whether a costs award is warranted at all. If so, then the next step is to consider how to calculate the amount. What expenses should be included? Should it be the full or partial amount of the included expenses? Is the final amount a reasonable number? In other words, a hearing tribunal should be considering all the factors set out in *KC*, in exercising its discretion whether to award costs, and on what basis. And of course, it should provide a justification for its decision.

54. In *Law Society of Alberta v. Beaver*, 2023 ABLS 4, an appeal panel dismissed that member's appeal of the hearing committee's finding of guilt, determination on sanction

[10] *Jinnah*, at paragraph 141.
[11] *Jinnah*, at paragraph 142.
[12] *Jinnah*, at paragraph 143.
[13] *Jinnah,* at paragraph 144.
[14] *Jinnah,* at paragraphs 141-144.

and award of costs to pay about 75% of total costs. The appeal panel distinguished *Jinnah* and held that it did not apply to matters governed by the *Act* but nonetheless concluded the awarded costs against Mr. Beaver as set out in the factors of *Jinnah* should be upheld. [15]

55. In *Galbraith,* the hearing committee considered the four scenarios set out in *Jinnah.* It found that while Mr. Galbraith's actions constituted serious misconduct, and his actions increased the length and the costs of the proceeding, he was not a serial offender, noting that "[m]ultiple instances of misconduct that are all considered with respect to a single citation, or multiple citations from the same factual matrix, do not constitute serial offences." [16]

56. In *Dr. Ignacio Tan III v. Alberta Veterinary Medical Association, 2024 ABCA 94* (*Tan 2024)* at paragraphs 34 and 35, the Court noted *Jinnah.* A decision maker must consider both whether a costs award is appropriate and if so, the quantum and further that costs are not punitive or a sanction. It pointed to the factors in *Alsaadi* as cited in *Jinnah* at paragraph 130.

57. In *Tan 2022* the Court spoke to the purpose of costs and a member's right in a professional disciplinary process to defend:

> Costs awards serve several purposes. One of them is to indemnify the party that has incurred costs, in this case the Association. The corollary is that some of the costs can properly be shifted to the member who has been found guilty of misconduct. However, full indemnity for costs is seldom appropriate. Leaving some of the burden of costs of disciplinary proceedings on the professional regulator helps to ensure that discipline proceedings are commenced, investigated and conducted in a proportional matter with due regard to the expenses being incurred.
>
> …
>
> Another aspect is the right of a professional to a reasonable opportunity to defend the charges. Allegations of misconduct against a professional are serious matters, as they impact not only the professional's reputation but his or her livelihood…The disciplinary system should not include a cost regime that precludes professionals raising a legitimate defence: *Alsaadi* v. *Alberta College of Pharmacy*, 2020 ABCA 313 at paras.114-15. [17]

58. The Court also adopted the approach to costs found in *KC* at paragraph 94.

[15] Beaver 2023 ABLS 4 On appeal to the ABCA
[16] *Galbraith*, at paragraph 102
[17] *Tan 2022,* at paragraph 43 - 45.

59. In each of *Jinnah*, *Tan 2024*, *Tan 2022*, the Court of Appeal adopted *Alsaadi* and in turn the factors in *KC* as the proper approach.

60. In this case, after consideration of the case law and submissions by both counsel, the Committee finds that Mr. Anderson's conduct falls into three of the four exceptions set out in *Jinnah* with the result he should pay some costs.

61. Mr. Anderson pled guilty to a citation of misconduct in the context of the Alberta Securities Commission and accepts a sanction of suspension of one month from the LSA, both which this Committee deems serious results.

62. As Mr. Anderson's citations arose from the same matrix of facts, he is not considered a serial offender.

63. Rule 105 of the Rules requires LSA members to report charges of certain offences to the LSA. This Committee does not agree that a member who complies with his obligation pursuant to the Rules of his regulating body is a mitigating factor.

64. The Committee finds that Mr. Anderson's conduct unnecessarily prolonged the hearing. Citation 1, set out in his Admissions dated September 10, 2024, reflects the ASC Settlement Agreement and Undertaking signed by Mr. Anderson on March 7, 2019. We do not agree with counsel for Mr. Anderson that as the admissions in the LSA process did not result in further culpability, Mr. Anderson is absolved of paying any costs. We draw the opposite conclusion. Indeed, the member has a right to defend himself. However, the LSA investigation commenced September 24, 2019, more than six months after Mr. Anderson signed the ASC Settlement Agreement and Undertaking, and is evidence that the member could have chosen to agree to the LSA citation before the investigation began. Doing so would have reduced or eliminated some of the costs of the investigation and or the hearing. Mr. Anderson cannot now justifiably object to paying costs attributable to his actions.

65. The Committee also notes that it was during the LSA investigation that the facts which resulted in citation 3 were established.

66. As to the fourth exception noted in *Jinnah*, the Committee notes Mr. Anderson submitted a preliminary application in the days just before the hearing began to which the LSA counsel was required to respond thereby increasing the costs of prosecution. The Agreed Statement of Facts was presented to the Committee only after the hearing was scheduled to begin.

67. The Committee notes that costs are discretionary, and that the ordering of costs should be exercised judiciously. In addition to application of the *Jinnah* factors listed above, the Committee applies the factors set out in *Alsaadi* and *KC*.

68. The Committee finds that Mr. Anderson's conduct constitutes serious misconduct, that he failed to cooperate with investigators to the extent that more resources than necessary were required to ascertain the facts and that he engaged in hearing misconduct which unjustifiably increased the cost of prosecution. However, this Committee does not find that Mr. Anderson's actions were those of a serial offender.

69. In this case, we find a costs award is warranted.

70. The Committee is of the view that the costs of the investigation and hearing are reasonable. The subject matter is complex, there was significant data received from the ASC which required review, there were numerous pre-hearing conferences and exchanges of various versions of statements of facts, time spent by LSA counsel on the matter spanned a number of years and included preparatory work for the five-day hearing, and further there was work on the preliminary application by Mr. Anderson just days before the hearing was to commence.

71. The Committee acknowledges the agreement with respect to the merits which shortened the length of the hearing and witnesses were not required to testify. The Committee also notes the joint submission on sanction. Certainty of an outcome benefitted the parties, and on that basis, some award of costs must be borne by both. In these circumstances, the Committee finds that a partial costs award against Mr. Anderson is appropriate.

72. With regard to the *Farrell* case that Mr. Anderson's counsel referred to, certainly that hearing committee applied a principled approach. However, we distinguish that case from the one before us. This case is factually more complex, the duration of time over which the citations arose was longer, the sanction in that case was a reprimand as opposed to a suspension and there is difference in costs incurred by the LSA. In *Farrell* the hearing committee considered the late stage at which Mr. Farrell made his admission of guilt. Here too, Mr. Anderson made an admission of guilt only after an extensive investigation, multiple exchanges of statements of facts, advancing a preliminary application, and only after the hearing began. Because of these distinguishing facts this Committee does not find it reasonable to order costs in the range deemed appropriate in *Farrell.*

73. In *Zang*, the estimated costs were some $47,000.00 and Mr. Zang was required to pay the full amount.

74. In *Alsaadi* Justice Khullar identified a trend in the case law whereby hearing tribunals calculated total maximum expenses to a hearing and appeal and then ordered a percentage of that amount to be paid by the unsuccessful professional. Specifically at paragraphs 109 to 112, she pointed to cases where the professionals were ordered to pay costs in the range of 60-75%.

75. Further, in *Alsaadi*, it was stated as follows[18]:

> This Court in *KC* stated at para 94 that "costs awarded on a full indemnity basis should not be the default". The approach described above is a kind of 'default approach': calculate the full expenses for the investigation and hearing and then apply a discount warranted in the circumstances. Practically, the end result is not costs on a full indemnity basis, but it is typically a very significant amount.
>
> …
>
> A more deliberate approach to calculating the expenses that will be payable is necessary. Factors such as those described in *KC* should be kept in mind. A hearing tribunal should first consider whether a costs award is warranted at all. If so, then the next step is to consider how to calculate the amount. What expenses should be included? Should it be the full or partial amount of the included expenses? Is the final amount a reasonable number? In other words, a hearing tribunal should be considering all the factors set out in *KC*, in exercising its discretion whether to award costs, and on what basis. And of course, it should provide a justification for its decision.

76. The above approach was cited with favour in *Galbraith* at paragraph 99.

77. The Committee is of the view that in these circumstances Mr. Anderson should not pay costs in full, but it is appropriate that he pay a significant amount.

78. Some reduction is warranted because Mr. Anderson did admit guilt and made a joint submission on sanction. As we deem the costs to be reasonable, it is appropriate that Mr. Anderson pay a partial award. The Committee orders that he be responsible for 75% of the Investigation costs, LSA counsel preparation and hearing fees plus 100% of the disbursements and expenses.

79. The Committee notes that the appeal panel decision of *Beaver* was appealed to the Alberta Court of Appeal. That Court recently issued its decision[19] dismissing the appeal. With respect to costs, the Court reviewed the costs and found them to be reasonable. The Court declined to comment on *Jinnah* given that it is being reconsidered more specifically by the Court of Appeal in another case[20]. Given the above, the Committee has applied the factors in *KC* relied on in *Alsaadi*, *Jinnah*, and both *Tan* 2022 and *Tan 2024*. The citations were serious, Mr. Anderson pled guilty and the costs for both the investigation and hearing are reasonable. He is not being ordered to pay the full costs but a significant portion.

---

[18] *Alsaadi*, at paragraphs 113 and 120.
[19] *Beaver v Law Society of Alberta*, 2024 ABCA 354.
[20] *Charkhandeh v. College of Dental Surgeons of Alberta*, 2024 ABCA 239.

Order of the Hearing Committee as to Costs

80. The Estimated Statement of Costs sets out a total of $69,495.63. The Committee directs that Mr. Anderson pay 75% of the investigation and LSA counsel costs and 100% of disbursements and expenses listed. Accordingly, the Committee orders Mr. Anderson to pay $52,302.83, to be paid in full by December 31, 2026.

Concluding Matters

81. In summary, the Committee finds Mr. Anderson guilty of conduct deserving of sanction of citations 1 and 3. The Committee accepts the withdrawal of citation 2.

82. The Committee orders Mr. Anderson be suspended for one-month with the suspension to commence December 15, 2024.

83. Mr. Anderson is ordered to pay costs of $52,302.83 by December 31, 2026.

84. No notice to the Attorney General is required.

85. A Notice to the Profession is required pursuant to section 85 of the *Act*.

86. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Anderson will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated December 13, 2024.

_____

Angela Saccomani, KC – Chair

_____

Michael Brodrick

_____

Louise Wasylenko