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

AND

IN THE MATTER OF AN APPEAL
REGARDING GREGORY LIAKOPOULOS
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Appeal Panel

Lou Cusano, QC – Chair and Bencher
Ryan Anderson, QC – Bencher
Ted Feehan – Bencher
Barbara McKinley – Lay Bencher
Sanjiv Parmar – Bencher
Sandra Petersson – Bencher
Salimah Walji-Shivji – Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Gregory Liakopoulos – Self-represented

Hearing Date

May 5, 2022

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

Overview

1. The facts related to this appeal are largely not in dispute and are set out in the decision of the Hearing Committee (Committee) dated July 19, 2021 (*Law Society of Alberta v. Liakopoulos*, 2021 ABLS 22) (Decision).

2. Gregory Liakopoulos was admitted to the LSA on June 19, 1988 and had practised as a partner with two national law firms in their Calgary offices, in real property and commercial law. The citations considered by the Committee relate to Mr. Liakopoulos' role and conduct as the sole trustee of the P.R. Trust (Trust) and Trust funds held in a bank account established by Mr. Liakopoulos in the name of the Trust.

3. Specifically, over a period of approximately two years (2016 - 2018), Mr. Liakopoulos transferred significant sums of money (more than one million dollars) from the Trust to the account of a numbered company, of which he was the sole shareholder and director. The money was used by Mr. Liakopoulos personally for gambling purposes. Restitution by Mr. Liakopoulos was never made. Mr. Liakopoulos was suspended on March 15, 2019 after an investigation by the LSA following Mr. Liakopoulos' submission of a self-report to the LSA on August 7, 2018 (Self-Report).

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

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

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

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

5. The Committee found that Mr. Liakopoulos was guilty of conduct deserving of sanction on each of the citations pursuant to section 71 of the *Legal Profession Act* (*Act*) and imposed a sanction of disbarment in accordance with section 72 of the *Act* effective April 12, 2021. Mr. Liakopoulos was also ordered to pay costs of $35,901.35 pursuant to section 72(2) of the *Act*.

6. Mr. Liakopoulos appeals the Committee's decision as to sanction only, pursuant to section 75 of the *Act*.

7. Mr. Liakopoulos raised the following ground for his appeal:

   > … the Hearing Committee failed to acknowledge that [Mr. Liakopoulos'] mental illness of Addiction was at issue during the conduct at the time of the citations… As a result of the Hearing Committee's errors, the Hearing Committee's decision was unreasonable. Therefore, the Hearing Committee's order of disbarment should be set aside. [Appeal Submission of Mr. Liakopoulos, paragraph 1]

8. On May 5, 2022, an Appeal Panel of Benchers (Appeal Panel) conducted a hearing of the appeal of Mr. Liakopoulos. This is the Appeal Panel's decision.

Preliminary Matters

9. There were no objections to the constitution of the Appeal Panel or its jurisdiction. A private hearing was not requested and therefore a public hearing of Mr. Liakopoulos' appeal was held.

10. At the outset of his submissions before the Appeal Panel, Mr. Liakopoulos made a request to have Dr. RH attend at the appeal and speak to a letter which Dr. RH had prepared, which had been entered as Exhibit 21 during the Conduct Hearing, and to invite the Appeal Panel to ask Dr. RH any questions which the Appeal Panel may have. No formal application to adduce fresh evidence was made and no notice of Mr. Liakopoulos' request was provided to LSA counsel.

11. The Appeal Panel denied Mr. Liakopoulos' request at the hearing of the Appeal on the grounds that:

    1) If Mr. Liakopoulos' request were treated as an application for leave to adduce fresh evidence, the application failed to meet the test for fresh evidence in that this evidence was available and he had the opportunity to present it to Committee. It was noted that Mr. Liakopoulos made the decision not to make Dr. RH available for cross-examination before the Committee.

    2) Alternatively, the Appeal Panel found that it was not appropriate to deal with or revisit factual matters that were addressed before the Committee and determined and weighed by that Committee, noting that Dr. RH's letter was admitted into evidence and the Committee addressed it, ascribing to it the weight which it viewed as appropriate.

    3) Further, Mr. Liakopoulos was entitled to make whatever arguments he felt appropriate on the record, which of course included Dr. RH's letter.

12. The Appeal Panel noted that it would elaborate upon the reasons for denying Mr. Liakopoulos' request in its decision. The reasons for so doing follow.

13. The Appeal Panel considers Mr. Liakopoulos' request to be an application under section 76(6) of the *Act* and it is treated as such. The test in relation to adducing fresh evidence on an appeal is well known. In *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 SCR 759, the Supreme Court of Canada laid out the test as follows at page 775:

> From these and other cases, many of which are referred to in the above authorities, the following principles have emerged:
>
> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases…

(2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.

(3) The evidence must be credible in the sense that it is reasonably capable of belief, and

(4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

14. These principles have been adopted and applied by previous LSA appeal panels, most recently in *Law Society of Alberta v. Virk*, 2021 ABLS 16 [at paragraph 15] and *Law Society of Alberta v. Burgener*, 2020 ABLS 13 [at paragraph 12].

15. Mr. Liakopoulos sought to have Dr. RH's letter entered in evidence before the Committee. Despite the fact that no notice was provided to the LSA of his intention to do so and without making Dr. RH available to testify and be cross-examined, the Committee accepted the letter into evidence. The Committee's comments in relation to Dr. RH's letter and his attendance before the Committee were as follows at paragraphs 22, 23 and 54 of the Decision:

> 22. At the Hearing, Liakopoulos provided a letter dated February 14, 2020, from Dr. RH (the Dr. RH Letter) indicating that Liakopoulos had been in his care since 2018 for his gambling addiction. The Dr. RH Letter described previous diagnoses and prescriptions as "spurious" and distracting from his diagnosis of addiction. Dr. RH diagnosed Liakopoulos as having met the criteria for Pathological Gambling Addiction and considered him unfit for work until the end of January 2019 due to addiction and mental health problems. He detailed the treatment programs Liakopoulos had attended subsequent to his resignation. The Dr. RH Letter indicated that Liakopoulos faced extreme financial and emotional hardship over the prior two years, expressed the view that the defalcation occurred because of the addiction and mental health issues and expressed the conclusion that Liakopoulos was the subject of a wrongful dismissal. This report was only provided to the Committee and counsel for the LSA shortly before the Hearing commenced. Dr. RH was not called to give evidence, nor was he qualified as an expert witness or in relation to his particular medical expertise.
>
> 23. Apart from the Dr. RH Letter, no independent medical evidence was provided to the Committee at the Hearing or in any of the exhibits in the Exhibit Binder…
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> …

> 54 … The Dr. RH Letter was only produced immediately before the Hearing and without affording the LSA any opportunity to obtain or provide its own medical evidence or cross-examine the author of the Dr. RH Letter…

16. There was no suggestion that Dr. RH was not available to testify before the Committee. There are cursory references to financial means as a reason for not having Dr. RH attend [Hearing Transcript page 117, lines 9 – 12] but no other explanation was offered by Mr. Liakopoulos.

17. Mr. Liakopoulos was asked the following question by the Appeal Panel:

> Can you help me understand why the physician, the letter that was provided I understand late in the game initially and then the same physician who you had offered to bring at 10 am today, was not qualified as an expert? Can you help me understand what happened at the beginning and why the lateness of the report and some of the facts around that? [Appeal Transcript page 69, lines 25 – 26 and page 70, lines 1 – 7]

18. Mr. Liakopoulos responded as follows:

> Unfortunately, I did not have the funds to do anything further up until the date of the hearing. There were some strategic reasons for the disclosure, and I acknowledge that. But in terms of, I believe, enabling or declaring the expert – or the doctor as an expert witness, I don't know what that process is or, frankly, why I have to do it, to be honest. [Appeal Transcript, page 71, lines 5 – 12]

19. The Appeal Panel notes that Mr. Liakopoulos was represented by experienced counsel at the Hearing and it can be reasonably assumed that the advisability and strategy regarding Dr. RH's appearance and qualification before the Committee would have been discussed with Mr. Liakopoulos.

20. The fact that Mr. Liakopoulos was able to make Dr. RH available to testify before the Appeal Panel, despite again referencing his financial issues [Appeal Transcript, page 61, lines 6 – 10], suggests that Dr. RH's evidence was available and he could have been called as a witness at the Conduct Hearing.

21. The Appeal Panel finds that the evidence of Dr. RH was available and could have been adduced at first instance. Therefore, the first leg of the test in *Palmer* has not been met and Dr. RH's oral evidence was not admitted before the Appeal Panel. In the circumstances, the balance of the test in *Palmer* need not be considered.

22. If the Appeal Panel is wrong in this respect and the balance of the test in *Palmer* must be addressed, the Appeal Panel finds as follows. Although there may be an argument that the evidence is relevant in that it bears upon a decisive or potentially decisive issue, and that it may be credible in that it is reasonably capable of belief (the evidence would

come from a physician who would be expected to be duly qualified), the oral evidence if believed would not reasonably, when taken with the other evidence adduced at the Conduct Hearing, be expected to have affected the result.

23. The Appeal Panel so finds because the letter of Dr. RH was admitted into evidence and forms part of the Record. It would be reasonably expected that Dr. RH's evidence would be limited to the opinions he has already expressed in his letter. The Committee assessed this evidence in its deliberations, finding that it was not determinative in establishing a causal link between Mr. Liakopoulos' conduct and an illness of addiction. It cannot be reasonably said therefore, in all of the circumstances of the case, that Dr. RH's oral evidence could reasonably be expected to have affected the result.

24. For the reasons set out above, the Appeal Panel finds the *Palmer* test is not satisfied and denies Mr. Liakopoulos' request to have Dr. RH attend before it to speak to the Dr. RH Letter.

Background

21. The facts in this matter are set out in paragraphs 9 – 23 of the Decision and as noted are largely undisputed.

22. In summary, while a member of another large national law firm in its Calgary office, Mr. Liakopoulos agreed to act as trustee of the Trust upon its formation in approximately 2006. The Beneficiary was a company incorporated in the British Virgin Islands.

23. In approximately 2013, after Mr. Liakopoulos had relocated to a new firm, discussions were held over an extended period of time with a lawyer, ER, who acted on behalf of the Beneficiary, regarding the potential distribution of the remaining trust money to the Beneficiary. The Trust's bank balance at the end of 2014 was $1,382,886.02. In December 2014, Mr. Liakopoulos proposed an arrangement whereby a loan of the remaining money would be made to the sole director and shareholder of the Beneficiary, and Mr. Liakopoulos would receive a fee of $50,000 and an indemnity in respect of future tax liabilities.

24. Discussions in relation to the proposed distribution loan arrangement continued over an extended period, with Mr. Liakopoulos asking many times during 2015 for confirmation from the Beneficiary of the proposed arrangement but without receiving any confirmation, updates or instructions.

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

transferred to Mr. Liakopoulos' firm's trust account and a portion of that was provided to a client to discharge certain liens. The balance of $31,954.45 was transferred from the firm trust account to the bank account of GL's Company.

26. In late June 2018, ER informed Mr. Liakopoulos that he wished the Trust funds be distributed to the Beneficiary and the Trust be dissolved.

27. In his evidence at the Hearing, and in his statements made during the LSA investigation, Mr. Liakopoulos indicated that he had persuaded himself that a reading of the Trust agreement allowed him, as trustee, to invest the funds of the Trust by way of a loan to a company in which he had an interest. However, he did not contact ER to inform the Beneficiary of his conclusions and of his intention to proceed in this fashion, nor did he seek any approval for so proceeding.

28. Mr. Liakopoulos reluctantly conceded that the GL's Company loan and accompanying security documentation had all been created after the fact on June 30, 2018, immediately before a scheduled conference call with the Beneficiary. The Committee found as a fact that the documentation was created for the purposes of that phone call.

29. On July 31, 2018, Mr. Liakopoulos informed ER and the Beneficiary that the Trust funds had been invested in a "non-liquid investment". Among other things, Mr. Liakopoulos also indicated it would take 18-24 months to realize on the investment. No disclosure was made that the funds had been loaned to GL's Company, nor that GL's Company was solely owned and controlled by Mr. Liakopoulos. On August 2, 2018, Mr. Liakopoulos forwarded copies of the loan and security documents and banking statements (up to the end of August 2016) to the Beneficiary and ER, and then disclosed that GL's Company was the recipient of the loan.

30. On August 7, 2018, Mr. Liakopoulos filed the Self-Report. By virtue of the Self-Report, a number of interviews with LSA investigators and Mr. Liakopoulos' evidence before the Committee, the following emerged:

   - The purpose of the loan was to cover Mr. Liakopoulos' own personal gambling debts and to fund his gambling addiction, from which he had been suffering for close to 20 years;
   - Mr. Liakopoulos acknowledged that he should not have made the loan;
   - In 2015, Mr. Liakopoulos had approached a friend for assistance with financial issues arising from his gambling. His parents had helped him out in 2015 by mortgaging their business to pay out that friend and deal with tax arrears;
   - The addiction issues appeared to accelerate around 2017 and led to Mr. Liakopoulos utilizing various medications without a resolution to those addiction issues;
   - Mr. Liakopoulos entered into a voluntary casino ban through the Alberta Gaming and Liquor Commission but continued his addiction using Video Lottery Terminals in various bars;

- Mr. Liakopoulos resigned from his firm on August 9, 2018, at its request;
- After the Beneficiary sought the distribution of the Trust funds, Mr. Liakopoulos viewed his issue as a financial issue. In his view, he simply had a payback problem, which he thought he could resolve, and attributed this to his addiction;
- Mr. Liakopoulos emphasized that his addiction was a disease that precluded him from making the rational judgments and assessments that his role as a fiduciary required of him in the circumstances. He indicated he was diagnosed as having a dysfunctional emotional response preventing him from thinking like a lawyer;
- Mr. Liakopoulos first sought professional counselling in approximately 2004 - 2005 but did not have any other formal treatment between then and 2015. He took medication for ADHD, but it did not address his gambling addiction; and
- In August 2018, in a handwritten note to his family, he expressed his shame and embarrassment and conceded that he […].

31. At the Conduct Hearing, Mr. Liakopoulos provided a letter dated February 14, 2020, from Dr. RH which indicated that Mr. Liakopoulos had been in his care since 2018 for his gambling addiction. The letter described previous diagnoses and prescriptions as "spurious" and distracting from his diagnosis of addiction. Dr. RH diagnosed Mr. Liakopoulos as having met the criteria for Pathological Gambling Addiction and considered him unfit for work until the end of January 2019 due to addiction and mental health problems.

32. Dr. RH detailed the treatment programs Mr. Liakopoulos had attended subsequent to his resignation. Dr. RH indicated in his letter that Mr. Liakopoulos faced extreme financial and emotional hardship over the prior two years, expressed the view that the defalcation occurred because of the addiction and mental health issues and expressed the conclusion that Mr. Liakopoulos was the subject of a wrongful dismissal.

33. Apart from the Dr. RH Letter, no independent medical evidence was provided to the Committee at the Conduct Hearing.

The Submissions of the Parties

34. Mr. Liakopoulos, who was unrepresented by counsel, made the following submissions (both written and oral):

- The appropriate standard of review is reasonableness;
- The facts are generally uncontested;
- Mr. Liakopoulos suffered from his mental illness of addiction throughout most of his adult life and in particular during his 20 years of practice as a lawyer;
- There is sufficient and credible evidence of Mr. Liakopoulos' mental illness of addiction on the record and evidence of a causal link between the conduct and Mr. Liakopoulos' mental illness of addiction;

- The Committee failed to acknowledge Mr. Liakopoulos' mental illness of addiction was at issue at the time of his impugned conduct and as a result the order of disbarment was unreasonable;
- This evidence of mental illness and causal link was ignored by the Committee and the Committee was unreasonable in doing so. Such evidence ought to have been taken into consideration in determining the appropriate sanction;
- Mr. Liakopoulos relies on the decision of *R v. Shevchenko,* 2018 ABCA 31 in support of his submission that the failure of the Committee to appreciate the extent and manifestation of his mental illness of addiction and its link to moral blameworthiness makes the decision of the Committee an error in law rendering the sanction unreasonable;
- Mr. Liakopoulos takes the position that the Committee's findings at paragraph 54 of the Decision, where it noted that "…while medical reports might deal with the risk of reoffending behavior, it cannot address the regulatory task of demonstrating to the public that the LSA is responding to the conduct in a manner that leads to a high degree of public confidence in the profession", are unreasonable as authorities suggest that mental health issues must be taken into account when considering sanctions and that indeed taking mental health issues into account preserves the obligation to protect the public and the public's confidence in the profession;
- No evidence to the contrary was offered by the LSA and the LSA failed to investigate issues related to his illness despite the fact that the LSA was aware of his condition;
- Mr. Liakopoulos is not asserting that the medical evidence be used so as to allow him to resume the practice of law. Rather, that it be admitted and acknowledged that Mr. Liakopoulos suffered from a mental illness and that formed the basis for the decision to disbar him; and
- The Decision of the Committee was therefore unreasonable, and Mr. Liakopoulos asks that the appeal be allowed and that the Benchers set aside the sanction and substitute a sanction that is reasonable having regard to Mr. Liakopoulos' mental illness of addiction.

35. Counsel for the LSA made the following submissions:

- The Committee properly considered all evidence before it and its decision to order a sanction of disbarment was reasonable and fit, and therefore Mr. Liakopoulos' appeal should be dismissed with costs;
- The LSA agrees that the appropriate standard of review is reasonableness. The questions for the Appeal Panel are not whether it would have imposed a different sanction but whether the Committee applied the wrong principles or whether the sanction is demonstrably unfit. A sanction will not be demonstrably unfit if it falls within a reasonable range of sanction for the misconduct proven;
- Here disbarment falls within the range of sanctions for this misconduct on the three citations;

- The sanction of disbarment was appropriate and proportionate for Mr. Liakopoulos considering all of the circumstances;
- The misconduct of Mr. Liakopoulos spanned two years and involved 11 separate occasions in which funds were taken from the Trust;
- This misconduct raises significant concerns about the protection of the public and maintaining confidence in the legal profession;
- The Committee's determination that the medical evidence was problematic and insufficient to establish causation was reasonable and entitled to significant deference;
- It is untenable for Mr. Liakopoulos to argue that the LSA failed to investigate his medical evidence or provide evidence that addiction was not an issue. Mr. Liakopoulos bore the burden of proof in this respect;
- Mr. Liakopoulos has not demonstrated that any aspect of the limited medical evidence put forward was overlooked. The letter of Dr. RH was admitted, and the Committee accorded it the appropriate weight – that is, while there may be an illness, the causal link was not established in respect of the conduct which was the subject of the three citations;
- The weight to be given to and the appropriate inferences to be drawn by the medical evidence was well with the purview of the Committee;
- The Committee's decision on sanction is entitled to deference and there is no error in principle or law that would justify interference with the sanction imposed; and
- The LSA distinguishes the authorities relied upon by Mr. Liakopoulos and cited at Tab 3 of his Appeal Submission on the basis that the authorities are dated, deal with technical misappropriation arising from a breach of trust accounting rules, have full restitution as a critical mitigating factor or deal with very minimal amounts ($500). None of the cases are comparable in respect to the facts of this case.

Analysis

Standard of Review

36. The *Act* makes it clear that an appeal of the Committee's Decision is to be made to the Benchers and it is an appeal on the record. The *Act* provides as follows:

> 76(1) If an appeal is taken to the Benchers under section 75, the Benchers shall, as soon as practicable and subject to compliance with section 75, hold a hearing to
> a) consider the hearing report and the hearing record, and
> b) hear any representations of the member or the member's counsel respecting the appeal.

37. In conducting its review of the Decision and the hearing record, the Appeal Panel finds the words of Justice Slatter in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98, at paragraph 34, helpful:

> Of central importance in setting the internal standard of review is the role assigned to the appeal tribunal by the governing statute… The wording of the *Act* makes it clear that the appeal tribunal is to conduct "appeals". Its decision is to be "based on the decision of the body from which the appeal is made", signaling that the primary role of the appeal tribunal is to review that decision. It follows that the appeal tribunal is not to re-conduct the entire proceeding *de novo*, a conclusion that is affirmed by the provision in s. 111(1)(b) that the appeal proceeds on the "record"…

38. Although the Court in *Yee* was considering the provisions of the *Regulated Accounting Profession Act*, RSA 2000, C. R-12 in the context of an internal appeal from a discipline tribunal to an appeal tribunal regarding the conduct of a chartered accountant, the passage above is instructive in considering this internal appeal by Mr. Liakopoulos of a decision of the Committee to the Appeal Panel. The review to be conducted by the Appeal Panel is an "appeal" and it is to be conducted on the record, including a consideration of the Decision.

39. In *Yee*, Justice Slatter also provided the following guidance at paragraph 35:

> When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review: *Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation,* 2010 NSCA 38 at para. 23, 290 NSR (2d) 361. The following guidelines may be helpful:
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> a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
>
> b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
>
> c) with respect to decisions on questions of law by the discipline tribunal arising from the profession's home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;

d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: *Newton* at para. 79. It obviously should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;

e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession;

f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

40. In *Virk v. Law Society of Alberta*, 2022 ABCA 2, the Court of Appeal (which included Justice Slatter) considered an appeal of a member of the LSA of a sanction of disbarment imposed by a Hearing Committee (confirmed by a majority of an Appeal Panel). The Court cited with approval the following passage from *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313:

> 16 Sanctions in professional disciplinary matters involve mixed questions of fact and law and engage the professional judgment of the governing bodies and they are therefore reviewed for reasonableness… By analogy to the standard of review applied to sanctions generally, sanctions in professional misconduct cases should not be disturbed on appeal unless the sanction is demonstrably unfit or based on an error in principle…

41. In *Virk*, the Appeal Panel found that the Hearing Committee's sanction of disbarment was not manifestly excessive or demonstrably unfit and in turn the Court found the Appeal Panel's consideration of the issue to be reasonable.

42. It is clear therefore that this Appeal Panel must conduct its review of the Decision for reasonableness and should only depart from the sanction imposed if it finds that it is demonstrably unfit or based on an error in law or in principle. The parties also agree that that is the standard of review to be applied here.

Decision

43. The ground for Mr. Liakopoulos' appeal is narrow in scope and can be reduced to the following:

> the Committee failed to acknowledge that Mr. Liakopoulos' mental illness of addiction was at issue during the conduct at the time of the citations…and as a

> result the Committee's decision was unreasonable and the sanction of disbarment should be set aside

44. Mr. Liakopoulos submits that the Decision of the Committee was unreasonable, the appeal should be allowed, the sanction of disbarment should be set aside and a sanction that is reasonable having regard to Mr. Liakopoulos' mental illness of addiction be substituted instead. It must be said that Mr. Liakopoulos' submissions were at times confusing in terms of the result which he sought from the Appeal Panel. See for example, his submission at page 15 of the Appeal Transcript where Mr. Liakopoulos argued that he is not asserting that the medical evidence be used so as to allow him to resume the practice of law. Rather, that it be admitted and acknowledged that he suffered from a mental illness and that formed the basis for the decision to disbar him.

45. Mr. Liakopoulos argues there is sufficient and credible evidence of his mental illness of addiction on the record and evidence of a causal link between the conduct and his mental illness of addiction.

46. On this point, the Committee said the following in paragraph 54 of the Decision:

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

47. At paragraph 56 of the Decision, the Committee referenced paragraph 70 of the Hearing Guide (as it then was) which details a number of factors relevant to a determination of sanction. As to the limited medical evidence before it the Committee noted at j.:

> There did appear to be personal or emotional problems, but without sufficient or credible medical evidence to substantiate a causal link…

48. Mr. Liakopoulos provided information about issues related to his gambling in his Self-Report, to the LSA investigators and in testimony before the Committee. He also made submissions as to his gambling addiction issues before the Committee and the Appeal Panel. However, no independent medical evidence was adduced regarding the connection between his gambling issues and the conduct under review. As noted, the Committee was provided with a letter by Dr. RH but he was not called to testify and so he was not able to speak to his conclusions. We agree with LSA counsel in that the Committee was therefore left with a document of hearsay statements, with no opportunity to have its contents tested by cross-examination. It is not surprising that the Committee could not accord it any significant weight.

49. Further, a review of the Dr. RH Letter makes it clear that there is very little which could reasonably lead to the conclusion that there was a causal link between Mr. Liakopoulos' issues related to gambling and the behaviour here under review. Dr. RH offers a single sentence without any supporting information or analysis to ground his conclusion that Mr. Liakopoulos' "defalcation occurred because of him being ill with Addiction and Mental Health problems." We do not find anything unreasonable in the conclusion of the Committee that there was no cogent and persuasive medical evidence of a causal link between the misappropriation behaviour and the gambling addiction.

50. Indeed, in a response to a question from the Appeal Panel, Mr. Liakopoulos noted that his mental health issues were a contributing factor that led to his conduct which is the subject of the three citations, but his mental health issues did not excuse what he did. [Appeal Transcript, page 69, lines 7 – 17]

51. Similar to his argument discussed above, Mr. Liakopoulos argues that the Committee failed to acknowledge his mental illness of addiction was at issue at the time of his impugned conduct and that this evidence of mental illness and causal link was ignored by the Committee and the Committee was unreasonable in doing so. Such evidence ought to have been taken into consideration in determining the appropriate sanction. The analysis outlined above in paragraphs 45 through 50 applies equally to these submissions.

52. Mr. Liakopoulos also relies on the decision of *R v. Shevchenko,* 2018 ABCA 31 in support of his submission that the failure of the Committee to appreciate the extent and manifestation of his mental illness of addiction and its link to moral blameworthiness makes the decision of the Committee an error in law rendering the sanction unreasonable.

53. More specifically, Mr. Liakopoulos takes the position that the Committee's findings at paragraph 54 of the Decision, where it noted that "…while medical reports might deal with the risk of reoffending behavior, it cannot address the regulatory task of demonstrating to the public that the LSA is responding to the conduct in a manner that leads to a high degree of public confidence in the profession", are unreasonable as authorities suggest that mental health issues must be taken into account when

considering sanctions and that indeed taking mental health issues into account preserves the obligation to protect the public and the public's confidence in the profession.

54. We do not find *Shevchenko* to be of assistance in the circumstances. In *Shevchenko,* the Court was dealing with an appeal of a sentence related to convictions for a number of criminal offences. The argument on appeal included that the sentencing judge failed to treat the accused's mental health as a mitigating factor. The principles set out in *Shevchenko* relate to criminal matters and the consideration of mental illness in assessing moral blameworthiness, all in light of specific provisions of the *Criminal Code* and the jurisprudence developed regarding criminal offence sentencing. *Shevchenko* and the cases noted by the Court therein are therefore readily distinguishable.

55. Section 49 of the *Act* reads as follows:

> 49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
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> a) is incompatible with the best interests of the public or of the members of the Society, or
> 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.

56. And as noted in the Pre-Hearing and Hearing Guideline (October 1, 2021) of the LSA at paragraphs 187, 190, 191 and 192:

> 187. The fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.
>
> 190. Section 72(1) of the *Act* requires a Hearing Committee, on finding a member guilty of conduct deserving of sanction, to disbar, suspend or reprimand the member. The type of sanction must be determined with reference to the purposes of sanctioning.
>
> 191. Each type of sanction fulfills the dual purposes of specific deterrence for the individual lawyer and general deterrence for the profession. The sanction imposed in each case informs the profession and the public that the lawyer's conduct is unacceptable and will not be tolerated.

> 192. Disbarment is appropriate in the most serious cases where the lawyer's right to practice law must be terminated to protect the public against the possibility of a recurrence of the conduct, even if that possibility is remote. Where any other result would undermine public confidence in the integrity of the profession, the lawyer's right to practice may be terminated regardless of extenuating circumstances and the probability of recurrence. The reputation of the profession is more important than the impact of sanctioning on any individual lawyer.

57. And finally, the following commentary in *Bolton v. Law Society*, [1994] 1 W.L.R. 512 at 519 (C.A.) (cited with approval by a number of previous hearing committees including in *Law Society of Alberta v. Virk,* 2014 ABLS 51 and *Law Society of Alberta v. Beaver*, 2017 ABLS 3) is apposite:

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often, he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus, it can never be an objection an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of an individual member. Membership of a profession brings many benefits, but this a part of the price.

58. The point here is that the considerations at play in matters of professional misconduct are very different than those in criminal cases. The goal of the sanction in professional conduct matters, the related relevant considerations and the overall legislative and regulatory scheme make reference to cases like *Shevchenko* unhelpful.

59. Mr. Liakopoulos also cited *Law Society of Upper Canada v. Fine*, 2018 ONLSTH 56 but did not make any substantive submissions in relation to this decision. The Appeal Panel

has reviewed the decision and does not find it helpful for its deliberations in the circumstances.

60. In *Fine,* a Tribunal was considering the sanction to impose on a lawyer found guilty of professional misconduct as a result of his role in a mortgage fraud scheme. The Tribunal was focused on whether to impose a revocation of Mr. Fine's license as opposed to granting permission to him to surrender his license (which was jointly submitted by the parties) and considered the related professional conduct decisions that had developed in the specific context of mortgage fraud (see for example the discussion at paragraphs 6 – 13). This included a review of a number of mitigating factors, including whether Mr. Fine's personal issues of mental health mitigated against revocation. As noted by the Tribunal, Mr. Fine would, regardless of the sanction imposed (surrender or revocation), lose his license to practice law and public confidence would be maintained (see paragraph 33). *Fine* is therefore distinguishable on its facts.

61. In addition, in light of the specific provisions of the *Act*, the guidance in the LSA's Pre-Hearing and Hearing Guideline and the jurisprudence which has developed which considers the specific legislative and regulatory regime in Alberta, the Appeal Panel does not find *Fine* to be of assistance in its review of the Decision and the record.

62. Mr. Liakopoulos also relies on a number of decisions involving professional conduct matters which were attached as Tab 3 of his Appeal Submission. These decisions, which involved varying degrees of misconduct and sanction amounts, assist only so far as their particular facts are analogous and then only in helping to assess whether the Committee's Decision was reasonable. Our role is not to substitute a sanction which we may have imposed at first instance. We do not find anything in these authorities cited by Mr. Liakopoulos which would suggest that the sanction of disbarment imposed on him is unreasonable. We say so for the following reasons.

63. The Committee conducted an in-depth analysis of the factors it was required to consider in imposing the sanction of disbarment (see paragraphs 49 – 57). It considered guiding principles related to the imposition of sanction, mitigating factors (including an analysis of the limited medical evidence), aggravating factors and factors outlined in the LSA's Hearing Guide (as it then was).

64. The Committee concluded at paragraph 57 as follows:

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

65. The decision on sanction was proportionate and reasonable in light of all the circumstances of the case. Mr. Liakopoulos was found guilty of conduct deserving of sanction related to citations which alleged misappropriation, breach of fiduciary duty and a failure to act with honesty and integrity, involving significant sums of money. These citations speak to bedrock obligations of a lawyer and the Committee found that their breach should attract the sanction of disbarment. The mitigating factors (including the limited medical evidence) were not sufficient to displace the need to impose a sanction which would address the relevant sanctioning goals, including maintaining the public's trust in the profession.

66. The Court in *Bolton* stated as follows at paragraph 14 as to the consequences for dishonest conduct on the part of members of the legal profession:

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases, the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.

67. As noted by the tribunal in *Fine* at paragraph 8: "The point in *Bolton* was that cases of proven dishonesty require that the solicitor be struck from the Roll of Solicitors."

68. Echoes of *Bolton* can be found in the following passage from the text *Lawyers & Ethics: Professional Responsibility and Discipline* (Gavin MacKenzie) as quoted by the Committee:

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

69. And as the Committee stated in paragraph 54:

> As noted in *Beaver*, while medical reports might deal with the risk of reoffending behaviour, it cannot address the regulatory task of demonstrating to the public that the LSA is responding to the conduct in a manner that leads to a high degree of public confidence in the profession.

70. We agree. There is nothing unreasonable in the Committee's approach, its assessment of the evidence before it and ultimately the sanction imposed on Mr. Liakopoulos. At paragraphs 34 – 36, the Court of Appeal in *Virk* found:

> …The appellant has not demonstrated that any aspect of this evidence was overlooked. The weight to be given to, and the appropriate inferences to be drawn from Dr. C.E.'s evidence, was with the mandate of the discipline tribunals.
>
> [35] The appellant argues that his illness reduced his moral blameworthiness. That may be so, but the discipline tribunals were also required to consider protection of the public….
>
> [36] The appellant has not identified any palpable and overriding error with respect to the medical evidence or any reviewable error with respect to the inferences drawn from that evidence. While the medical evidence was susceptible to different interpretations, it is not the role of this Court to simply reweigh that evidence.

71. The evidence here in the form of the Dr. RH Letter was reviewed and assessed by the Committee and given the weight which it believed it deserved. Based on that limited evidence it found that the evidence was problematic and failed to establish a causal link between Mr. Liakopoulos' issues related to gambling and the behaviour under consideration. The Committee was not unreasonable to have so found on the evidence before it.

72. The Appeal Panel stands in review on a standard of reasonableness. Our role is to review the decision and the record and not to assess the evidence or sanction as if we were hearing the matter at first instance. We have reviewed the Decision and the record for any errors of law or errors of principle and have found none. We have considered whether the decision is reasonably sustainable, and have found that it is.

73. On a review of the Decision and the record, the Appeal Panel finds that in all of the circumstances of this case the sanction of disbarment was reasonable and is not demonstrably unfit or based on an error of law or principle. Disbarment is within a reasonable range of outcomes for the conduct under consideration. Therefore, the sanction of disbarment is confirmed.

Concluding Matters

74. As to costs, the parties shall provide their submissions on costs and any time needed to pay such costs, in the event costs are ordered payable by the Appeal Panel, to the Appeal Panel within 14 days of the date of this decision. The Appeal Panel shall render its decision on costs thereafter.

75. 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. Liakopoulos will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated June 29, 2022

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Lou Cusano, QC – Chair

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Ryan Anderson, QC

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Ted Feehan

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Barbara McKinley

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Sanjiv Parmar

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Sandra Petersson

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Salimah Walji-Shivji