

**IN THE MATTER OF PART 2 OF THE
LEGAL PROFESSION ACT, RSA 2000, c.L-8**

AND

**IN THE MATTER OF A RESIGNATION APPLICATION
REGARDING ALY-KHAN JIVRAJ
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee

Sharilyn Nagina, KC – Chair (Bencher)
Glen Buick – Committee Member (Lay Bencher)
Levonne Louie – Committee Member (Lay Bencher)

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta
Alain Hepner, KC – Counsel for Aly-Khan Jivraj

Hearing Date

April 15, 2024

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. Aly-Khan Jivraj (Jivraj) is a lawyer who practiced in Calgary, Alberta. He was admitted to the Alberta bar in 2014 and had no prior disciplinary record with the LSA.
2. Jivraj practiced mainly in the area of real estate conveyancing. Initially Jivraj practiced at a firm with a few other lawyers. In 2016, Jivraj opened his own firm called Apex Legal. Jivraj practiced as a sole practitioner at Apex Legal until March 12, 2020.
3. In 2019, the Law Society of Alberta (LSA) received complaints against Jivraj, including allegations that Jivraj had registered a caveat against his own client without notice, failed to keep his client updated on the transactions, and acted in a conflict of interest, among other matters. The complaint also raised questions about the receipt and provision of deposit funds in a residential real estate transaction.
4. In 2020, an Investigation Order was issued. The results of the ensuing investigation resulted in a referral to the LSA Conduct Committee.

5. Upon being contacted by the LSA, Jivraj cooperated with the investigation. On March 12, 2020, a custodian was appointed to take custody of Jivraj's practice. On March 13, 2020, Jivraj became an inactive member of the LSA. On March 15, 2020 he was administratively suspended.
6. On February 15, 2022, a Conduct Committee Panel of the LSA issued citations against Jivraj to be dealt with by a Hearing Committee.
7. On April 15, 2024, Jivraj applied to resign from the LSA. As Jivraj's conduct is the subject of citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application.
8. Jivraj requested the Committee to grant a resignation, pursuant to section 32 (in the face of discipline) of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (*Act*). The LSA opposed Jivraj's application for resignation under section 32 of the *Act* and argued that Jivraj's resignation should occur under section 61 of the *Act* which is a deemed disbarment. Both counsel for Jivraj and the LSA ultimately requested that the Committee decide whether to grant the resignation under either section 32 or section 61.
9. In support of his Resignation Application, Jivraj submitted:
 - an Application for Resignation as required by Rule 92(1)(a) of the Rules of the LSA (Rules);
 - a Statutory Declaration as required by Rule 92(1)(b) of the Rules;
 - undertakings and agreements upon resignation; and
 - a Statement of Admitted Facts, Exhibits, and Admission of Guilt.
10. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Jivraj, the Committee adjourned to consider the Resignation Application and advised that a written decision would follow in due course. This is that written decision.
11. The Committee orders the Resignation of Jivraj pursuant to section 61 of the *Act*.

Preliminary Matters

12. There were no objections to the Committee or to its jurisdiction. A private hearing was not requested so a public hearing into Jivraj's resignation application proceeded.
13. There were no preliminary matters.

Outstanding Citations

14. At the time of the Resignation Hearing, Jivraj faced twelve citations arising from three complaints. They are:

CO20190773 (Complaint #1)

- 1) It is alleged Aly-Khan Jivraj failed to provide competent, timely, conscientious, and diligent service to his clients, and that such conduct is deserving of sanction;
- 2) It is alleged Aly-Khan Jivraj acted in a conflict of interest when he improperly registered a caveat on his client's property, and that such conduct is deserving of sanction;
- 3) It is alleged Aly-Khan Jivraj acted in a conflict of interest in taking instructions from a third party and that such conduct is deserving of sanction;

CO20200267 (Complaint #2)

- 4) It is alleged that Aly-Khan Jivraj misappropriated or wrongfully converted trust funds and that such conduct is deserving of sanction;
- 5) It is alleged that Aly-Khan Jivraj failed to comply with Rules 119.21(2) and 119.21(3) by signing withdrawals from his trust account without first ensuring that the conditions precedent for those withdrawals existed and that such conduct is deserving of sanction;
- 6) It is alleged that Aly-Khan Jivraj failed to comply with Rule 119.24(1) by failing to maintain money on deposit in his trust account in an aggregate amount sufficient to meet all trust obligations and that such conduct is deserving of sanction;
- 7) It is alleged that Aly-Khan Jivraj failed to report shortages in his trust account contrary to Rule 119.24(3) of the Rules of the Law Society of Alberta and that such conduct is deserving of sanction;
- 8) It is alleged that Aly-Khan Jivraj failed to comply with Rules 119.36(1), 119.36(2), 119.36(3), and 119.36(4) by failing to correctly maintain his firm's prescribed financial records and that such conduct is deserving of sanction;
- 9) It is alleged that Aly-Khan Jivraj failed to comply with Rule 119.36(4)(d) by failing to conduct and maintain correct monthly bank reconciliations of his trust account and that such conduct is deserving of sanction;
- 10) It is alleged that Aly-Khan Jivraj practiced law while suspended and that such conduct is deserving of sanction;

CO20200602 (Complaint #3)

- 11) It is alleged Aly-Khan Jivraj failed to fulfill an undertaking and that such conduct is deserving of sanction; and
- 12) It is alleged Aly-Khan Jivraj failed to reply in a timely manner to communications from another lawyer and that such conduct is deserving of sanction.

Agreed Statement of Facts

15. On January 11, 2024, Jivraj signed a Statement of Admitted Facts, Exhibits, and Admissions of Guilt (ASF). The ASF includes admissions of misconduct for the period of December 2017 when Jivraj was retained to assist with the sale of a residential property until March 12, 2020 when a custodian was appointed over Jivraj's practice. The ASF also contains admissions with respect to the unauthorized practice of law following Jivraj's suspension.
16. In the ASF, Jivraj agreed to certain facts regarding each citation and made a number of admissions as noted below.

Complaint #1

17. Complaint #1 arose from Jivraj's representation of the legal owner (MC) and the alleged beneficial owner in the sale of a residential property. There were five separate real estate purchase contracts. The property was eventually sold to purchaser #5.
18. Jivraj made the following admissions in the ASF with regard to the citations related to Complaint #1:

Citation 1: Service to Clients

I admit that I failed to provide competent, timely, conscientious, and diligent service to MC, contrary to Rule 3.2-1 of the *Code of Conduct*, particulars of which include:

- (a) I failed to take steps to follow up with the purchasers (Transactions #1 to #4) or with opposing counsel (Transaction #5) regarding the missing deposits, or to report to MC about the missing deposits;
- (b) In Transaction #4, I prepared a Statement of Adjustments that was incorrect by including a deposit that I had never received;
- (c) In Transaction #5, I prepared a Statement of Adjustments that was incorrect and misleading by including two deposits that I never received. Nor did I take steps to confirm the existence of the underlying lending agreement which purported to be the basis of the deposits;

(d) I failed to report to MC in a timely manner about the closing of Transaction #5; and

(e) I failed to take steps to pay out the mortgage in a timely manner, resulting in additional interest accumulating.

Citation 2: Conflict of Interest (Caveat)

I admit that I acted in a conflict of interest when I improperly registered a caveat on MC's property on the instructions of SH and Purchaser #1 without advising MC before or after having done so, contrary to Rule 3.4-1 of the *Code of Conduct*.

Citation 3: Conflict of Interest (Instructions)

I admit that I acted in a conflict of interest when I took instructions from SH, a person who was adverse in interest to my formal client MC with respect to a dispute about the ownership of the property and how the proceeds of sale should be distributed, contrary to Rule 3.4-1 and Rule 3.2-6 of the *Code of Conduct*.

19. With regard to Complaint #1, Jivraj specifically denied forging signatures or being aware that documents were forged. In the ASF, Jivraj stated that, "... given my resignation, this issue will remain unresolved between the parties."

Complaint #2

20. Complaint #2 arises from allegations relating to Jivraj's trust account and the unauthorized practice of law.
21. As noted in the ASF, on March 11, 2020, Jivraj made the following admission to LSA investigators:

... I disbursed a cheque for \$390,267.13 from my trust account on December 30, 2019, when there was only \$5,000.00 credited to that particular client ledger. I was waiting for a payment that never arrived and falsely inputted \$391,100.00 into PC Law to show that I had received the funds. I subsequently wrote two trust cheques after the inputting of the false entry.

22. The Custodian of Jivraj's practice retained an accountant to conduct a forensic reconciliation of Jivraj's trust account.
23. As noted in the ASF, the reconciliation revealed:
- That Jivraj created 10 false deposits totalling \$923,819.23 into PC Law when no funds had actually been deposited to Jivraj's bank account;

- After the false deposits were entered into the client ledgers, Jivraj issued disbursement cheques and paid his legal fees based on the inflated figures;
- False deposits and incorrect accounting created shortages in 7 client matters for a total of \$622,678.93;
- Five trust cheques were returned NSF which were never replenished or reported to the LSA; and
- Between November 26, 2019 and March 4, 2020, during which time there were insufficient funds in Jivraj's trust account, he made eight payments to his firm for a total of \$27,223.87.

24. Jivraj made the following admissions in the ASF with regard to the citations related to Complaint # 2:

Citation 4: Misappropriation/Wrongful Conversion

I admit that I misappropriated or wrongfully converted monies from my clients, contrary to Rule 3.5-1(b) of the *Code of Conduct* and Rule 119.3(1) of the *Rules of the Law Society of Alberta* (the '**Rules**'), particulars of which include:

- (a) Whenever I disbursed funds from a client ledger after having created a false deposit in PCLaw when no deposit had been made to my firm's bank trust account, I was wrongfully converting monies belonging to all of my client[s] to the benefit of another client or third party; and
- (b) Between November 26, 2019 and February 25, 2020, I misappropriated \$27,223.87 in legal fees from client ledgers in PCLaw which had been artificially inflated with false deposits.

Citation 5: Conditions Precedent for Trust Withdrawals

I admit that I failed to comply with Rules 119.21(2) and (3) by signing withdrawals from my firm's trust account without first ensuring that the conditions precedent set out in those *Rules* existed beforehand.

Citation 6: Insufficient Trust Money on Deposit

55. I admit that I failed to comply with Rule 119.24(1) by failing to maintain money on deposit in my trust account in an aggregate amount sufficient to meet all trust obligations.

Citation 7: Trust Shortages

56. I admit that I failed to comply with Rule 119.24(3) by failing to replenish or report trust deficiencies in my trust account.

Citation 8: Prescribed Financial Records

57. I admit that I failed to comply with Rule 119.36(1) to (4) by failing to correctly maintain the prescribed financial records set out in those *Rules*.

Citation 9: Reconciliations

58. I admit that I failed to comply with Rule 119.36(4)(d) by failing to conduct and maintain correct monthly bank reconciliations of my trust account.

Citation 10: Practicing While Suspended

59. I admit that I failed to comply with section s.106 and 107 of the *Act* by practicing law after my practice was placed into a custodianship and while I was suspended, particulars of which include:

- (a) communicating with my former client's new lawyer and asking her to provide me with trust monies;
- (b) communicating with my former client's mother about my former client's legal situation; and
- (c) communicating with third parties about payments of monies owing to them.

Complaint #3

- 25. Complaint #3 arises from allegations that Jivraj failed to comply with a trust condition after the closing of a real estate transaction.
- 26. Jivraj made the following admissions in the ASF with respect to the citations related to Complaint #3:

Citation 11: Undertaking

77. I admit that between April 29, 2019 and March 12, 2020, I failed to fulfill the undertaking to provide proof of the mortgage discharged from title, contrary to Rule 7.2-14 of the *Code of Conduct*.

Citation 12: Failure to Respond

78. I admit that I failed to respond to communications from JK on August 9, 2019; November 4, 2019; February 6, 2020; and March 6, 2020, which is contrary to Rule 7.2-7 of the *Code of Conduct*.

The Evidence

- 27. As noted above, Jivraj provided an ASF and a statutory declaration. Additionally, Jivraj called three witnesses at the oral hearing: himself, Dr. B and AG.

28. The LSA did not call any witnesses.

Dr. B's evidence

29. [Medical information redacted]

...

Jivraj's evidence

54. Jivraj confirmed that he signed the lengthy ASF which was accepted by the Committee. Much of Jivraj's evidence was consistent with the ASF. As such, the Committee will not reproduce the entirety of the facts included in the ASF.
55. In his oral evidence, Jivraj elaborated on the stressors in his life around the time of the circumstances that led to the citations. These included issues with: his relationship, sleep, anxiety, law practice, and finances.
56. Jivraj also gave evidence with respect to his mental health during the period in which the allegations arose. He stated that during that time he was in a deep depression and a toxic relationship.
57. [Mental health information redacted]
58. Jivraj testified that he is not cut out for the practice of law. Jivraj also testified that while he did not have any thoughts of practicing in the near future, at some point down the road he would like to do something to redeem himself under "whatever conditions and supervisory aspects are deemed appropriate."
59. At the time of the Hearing, Jivraj advised that he was working in a human resources and management role at a pharmacy co-owned by his childhood friend AG and at AG's law firm.
60. Jivraj described his duties at the law firm as administrative – organizing files, greeting clients, getting copies, and picking up things needed for the firm.
61. In describing his duties at AG's law firm, Jivraj did not reference any steps that he did or did not take to notify the LSA that he was working at a law firm while he was suspended from the practice of law.
62. At the Hearing, Jivraj advised that after a custodian was appointed over his practice, he contacted his former clients who were required to deposit funds into his trust account. In Jivraj's oral testimony he stated that, "in no way was I attempting to do anything relating

with the practice of law.” This is contrary to the ASF where Jivraj admitted that this conduct constituted the unauthorized practice of law.

63. When pressed on cross-examination about his insurance coverage and in particular about the fact that it appeared that Jivraj’s period without insurance coverage for medications was shorter than he represented to Dr. B, Jivraj responded, “It looks to be that way, sir.”

AG’s evidence

64. Jivraj also called AG as a witness. AG is a childhood friend of Jivraj. AG is also a co-owner of the pharmacy and the owner of the law firm where Jivraj works. AG is not a medical professional.
65. AG provided his views on the stressors that Jivraj had endured while he was a sole practitioner and the stress and anxiety that Jivraj was under as a result of his toxic relationship. It was AG’s view that Jivraj’s mental health challenges began in 2017, and AG also noticed a deterioration in Jivraj’s disposition and physical appearance.
66. [Mental health information redacted]
67. AG described the work that Jivraj does at the pharmacy and in AG’s law office. AG testified that prior to hiring Jivraj as a contractor in his law firm, AG asked Jivraj to contact the LSA Practice Advisor to query whether Jivraj could be a contractor at AG’s law firm during Jivraj’s suspension. AG testified that Jivraj confirmed that he had done so and that the Practice Advisor had said it would be okay in these circumstances for Jivraj to work as an independent contractor.
68. AG described the law firm work as administrative and specifically stated that Jivraj was not advising clients at AG’s firm. According to AG, Jivraj performed the following work at AG’s firm: printing documents, photocopying, filing, drafting certain responses, amending contracts with names and dates, revising the odd will and look it over, going through closing checklists and confirming that documents are there, greeting clients, tagging things for signature, and dropping off and picking up documents.

Medical Evidence

69. In addition to the oral evidence, medical evidence was entered by consent, including records from Dr. N and Dr. S who are family physicians.
70. [Medical information redacted]

...

The Submissions of the Parties

75. While the parties agreed that a resignation should be granted, they disagreed on whether the resignation should be under section 32 or section 61 of the *Act*.
76. Jivraj argued that a resignation under section 32 was appropriate. In support of this position, Jivraj relied on his agreement to sign the ASF which prevented a very long hearing; his lack of a prior discipline record; a relatively short period of practice before the events occurred; his expressed remorse; and his submission that the events underlying the citations occurred under the umbrella of depression
77. Jivraj also argued that all of the admitted misconduct occurred under the umbrella of depression and as such there was a sufficient causal link between the depression and the misconduct to trigger the exception to disbarment following misappropriation of trust funds. As such, Jivraj submitted that a section 32 resignation was appropriate.
78. Jivraj also argued that there was no rule articulated in the caselaw that misappropriation automatically results in disbarment. In support of Jivraj's position, he relied on the decisions in: *LSA v. Byron*, 2013 ABLS 31; *LSA v. Doucet*, 2023 ABLS 12; and *LSA v. McGeachie*, 2007 LSA 21.
79. As part of his resignation application, Jivraj gave the following undertakings and agreements:
 - 1) I will cooperate with the Law Society of Alberta (the "**LSA**") in the future with respect to any claim made against me or against the Assurance Fund or Part B of the group policy.
 - 2) I will pay any deductible with respect to any claim paid by the LSA Insurer and will pay the LSA any claim paid from the Assurance Fund or the indemnity program fund.
 - 3) I will surrender to the LSA my Certificate of Enrolment.
 - 4) Pursuant to section 106(l) of the *Legal Profession Act*, RSA 2000, c L-8, as am. (the "**Act**"), attached as **Schedule "A"**, I will not engage in the practice of law.
 - 5) I will not appear on behalf of any person before any Court, tribunal, or administrative body performing any judicial or quasi-judicial function, including any appearance pursuant to section 106(2) of the *Act*, attached as **Schedule "A"**.
 - 6) I will not engage in or perform any service or activity of a paralegal nature on my own behalf, including any activity or service usually provided by an articling student, law clerk, legal assistant research assistant, or legal secretary. If I wish to work as a paralegal, I may do so only while in the employ of an active member or his/her professional corporation and only after all requirements of section 108 of the *Act*, attached as **Schedule "B"**, have been met.

- 7) I will not re-apply for admission to the LSA. If I want to be relieved of this undertaking, I will first pay to the LSA, the sum set out in the final Statement of Costs approved by the Resignation Committee, after which I may file an application to be relieved from this undertaking, all of which will precede any application for re-instatement.
80. Conversely, the LSA argued that a section 61 resignation or deemed disbarment was appropriate. The LSA argued that the admissions are clear, irrefutable, and would have been proven at a hearing. Further, a disbarment is necessary to ensure the reputation of the profession and the integrity of our trust system.
81. While the LSA agreed with Jivraj that there is no rule that misappropriation automatically results in disbarment, the LSA emphasized that there must be extraordinary circumstances to not disbar a person who engages in misappropriation of trust funds.
82. The LSA argued that the requisite extraordinary circumstances required to preclude disbarment following misappropriation are not present here.
83. [Medical information redacted]
- ...
85. While the LSA acknowledged that there was evidence of some depression, the LSA argued that there was both a lack of evidence of serious depression and a lack of evidence of the requisite causal link or nexus between the diagnosis of depression and the admitted misconduct underlying the citations.
86. The LSA relied on the following authorities: Adjudicator Guideline – Resignations (Resignation Guideline); Pre-Hearing and Hearing Guideline (Hearing Guideline); G. Mackenzie, *Lawyers & Ethics Professional Responsibility and Discipline*, 26:18; *NSBS v Murtha*, 2007 NSBS 1; *LSA v Juneja*, 2024 ABLs 2; *LSA v Beaver*, 2017 ABLs 3; *LSA v Beaver*, 2023 ABLs 4; *LSA v Virk*, 2019 ABLs 25; *LSA v Virk*, 2020 ABLs 4; *LSA v Virk*, 2021 ABLs 16; *Virk v LSA*, 2022 ABCA 2; *LSBC v Ross*, 2024 LSBC 16; *Tan v AVMA*, 2024 ABCA 94; *Jinnah v ADAC*, 2022 ABCA 336; and *Tremears* (Annotated), section 322 and section 334.

Analysis

87. At the outset, the Committee iterates that it has taken a holistic approach to deciding whether to grant a section 32 or section 61 resignation in Mr. Jivraj's matter. The Committee has analyzed the case law and authorities provided by the parties, reviewed the criteria for both types of resignations, reviewed sanctioning factors from the Hearing Guideline and carefully deciphered the evidence, most relevantly, the medical evidence proffered.

Criteria

88. A lawyer may apply to resign under section 32 or 61 of the *Act* when there are outstanding matters that may be of concern, including whether the lawyer's conduct is the subject of proceedings under Part 3 of the *Act*. In such case, Rule 92 of the Rules and the Resignation Guideline apply to either type of resignation.
89. It must be noted that there is a significant material distinction between a resignation application under section 32 and a resignation application under section 61.
90. A resignation application under section 61 of the *Act* amounts to a deemed disbarment if accepted. A resignation application under section 32 of the *Act* is merely one of resignation.

91. Section 32(1) of the *Act* states:

Resignation of member

32(1) No member may resign from the Society unless the member's resignation is submitted to and approved by the Benchers or a committee of the Benchers.

92. Section 61 of the *Act* states:

Resignation instead of continued proceedings

61(1) Subject to the rules, a member whose conduct is the subject of proceedings under this Division may at any time during the proceedings apply to the Benchers for their approval of the member's resignation as a member instead of having the proceedings continue.

93. "Disbarment" is defined as including a resignation under section 61 of the *Act*.

94. Section 19 of the Resignation Guideline provides:

A Resignation Committee must consider, among other matters, the following distinctions between a resignation pursuant to section 32 and a resignation pursuant to section 61:

- A resignation under section 61 is a deemed disbarment; and
- Section 106(3) of the *Act* prevents a disbarred person from acting as agent.

95. Section 20 of the Resignation Guideline provides:

In considering whether or not to accept an application for resignation, the Resignation Committee may consider:

- The nature of the lawyer’s alleged conduct and whether it would likely result in disbarment if the matter were to proceed to a hearing and the citations proved; and
- Whether there are disputed facts or other factors in Part VI of the Hearing Guide that would be taken into account by a Hearing Committee and which would mitigate against disbarment and make it an unlikely outcome if the matter were to proceed to a hearing.

Sanctioning Factors

96. Paragraph 198 of the Hearing Guideline addresses the importance of the seriousness of the misconduct in determining sanction. It states:

Factors for Consideration in Determining Appropriate Sanction

The prime determinant of the appropriate sanction is the seriousness of the misconduct. The seriousness of the misconduct may be determined with reference to the following factors:

- a. The degree to which the misconduct constitutes a risk to the public;
- b. The degree to which the misconduct constitutes a risk to the reputation of the legal profession;
- c. The degree to which the misconduct impacts the ability of the legal system to function properly (e.g., breach of duties to the court, other lawyers or the Law Society, or a breach of undertakings or trust conditions);
- d. Whether and to what extent there was a breach of trust involved in the misconduct;
- e. The potential impact on the Law Society’s ability to effectively govern its members by such misconduct;
- f. The harm caused by the misconduct;
- g. The potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer’s misconduct, and by which, but for some intervening factor or event, would likely have resulted from the lawyer’s misconduct;
- h. The number of incidents involved; and
- i. The length of time involved.

97. Paragraph 199 of the Hearing Guideline states:

The appropriate sanction may vary depending on whether the member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain public confidence in the legal profession may require a particular sanction regardless of the state of mind of the lawyer at the time of the misconduct.

98. The Hearing Guideline outlines the importance of integrity. At paragraph 201, it is stated:

Integrity is the most important attribute of any lawyer. Lawyers must discharge all duties owed to clients, the court, other members of the profession and the public with integrity. Integrity on the part of lawyers is essential to the effective operation of the legal system and the regulation of the legal system.

99. Paragraph 204 of the Hearing Guideline provides that a hearing committee may consider additional factors that have either an aggravating or mitigating effect on the appropriate sanction. These factors include;

- Prior discipline record;
- Length of time the lawyer has been in practice;
- Acknowledgment of wrongdoing including self-reporting and admission of guilt;
- Level and expression of remorse;
- Level of cooperation during the Conduct Proceedings such as attendance at PHCs, adherence to the pre-hearing Rules, etc.;
- Medical, mental health, substance abuse or other personal circumstances that impacted the lawyer's conduct;
- Restitution made, whether partial or in full;
- Rehabilitation since the time of misconduct;
- The extent to which the lawyer benefitted from the misconduct; and
- Whether the misconduct involved taking advantage of a vulnerable party.

Case Law

100. Resignation committees of the LSA have permitted members who faced serious conduct proceedings to resign pursuant to section 32 where the public interest may still be served without requiring either a public hearing into outstanding citations or a deemed disbarment. In those cases, resignation committees were satisfied that the member's conduct had been investigated and that certain mitigating factors existed that offer understanding and even explanation for the member's conduct. Equally importantly, in each instance, the applications for resignation were supported by the member's undertaking never to re-apply for admission to the LSA.

101. In support of his application to resign under section 32, Jivraj submitted the following three authorities:

- LSA v. Byron, 2013 ABLIS 31: two members of the LSA faced three citations. The citations included misappropriation of trust funds; failure to follow the trust accounting rules; and deceiving the LSA. After finding that there was conduct deserving of sanction, the hearing committee was presented with a joint

submission, which they accepted. The joint submission included a consecutive suspension of seven and two months along with a number of other terms.

- LSA v. Doucet, 2023 ABLIS 12: the member faced three citations. The citations included: engaging in conduct that impaired her capacity to provide competent services; encouraging her client to engage in illegal conduct; and acting without integrity by accepting payment directly from clients without documenting receipt or reporting payment to her employer. The citations did not allege misappropriation or conversion of trust funds. The member admitted guilt to all three citations. After finding that there was conduct deserving of sanction, the hearing committee was presented with a joint submission, which they accepted. The joint submission provided for a seven-month suspension plus costs.
- LSA v. McGeachie, 2007 LSA 21: the member pled guilty to a number of citations, including failing to follow accounting rules, failing to render accounts before releasing trust funds; breaching an undertaking to the LSA; and failing to comply with trust conditions. The member did not admit a citation with respect to the misappropriation or wrongful conversion of trust funds in the amount of approximately \$16,000.00. The hearing committee found that the member was also guilty of the citation with respect to misappropriation and wrongful conversion of trust funds. In considering sanction, the committee noted that there is no specific rule that the misappropriation of trust funds must result in disbarment. The committee concluded that the member's conduct arose from incompetence and imposed a suspension of 18 months.

102. In the *Byron* and *Doucet* decisions there was a joint submission provided to the hearing committee for consideration. This Committee has not been presented with a joint submission on resignation for consideration.

103. In support of an application for a section 61 resignation, the LSA submitted a number of authorities, including the authorities listed below.

- G. Mackenzie, Lawyers & Ethics Professional Responsibility and Discipline, 26:18: The excerpted portion included the commentary that factors such as financial and relationship stress and mental illness are material to the assessment of penalty when there is a causal relationship between the condition and the conduct. These conditions generally do not excuse the misconduct. It is sufficient for the law society's counsel to show that the lawyer knowingly and without coercion committed the misconduct.

The excerpt also included commentary on whether acts of misappropriation should automatically result in disbarment: "in order to refuse the presumptive penalty of revocation in a misappropriation case, the lawyer must show exceptional circumstances."

Additionally: “An order of disbarment in such cases is made to preserve public confidence, to protect the public, and to deter other lawyers from breaching the trust of their clients. ... To rise to the level of exceptional circumstances, however, the mitigating factors must clearly obviate the need to reassure the public of the profession’s integrity.”

- *NS Barristers’ Society v. Murtha, 2007 NSBS 1*: The issue before the hearing committee was whether the member should be permitted to resign or should be disbarred following admissions of guilt to serious misconduct. The hearing committee was presented with a comprehensive joint proposal on sanction that included a permitted resignation within a certain time period, failing which disbarment would occur. The proposal also contained provisions relating to time period prior to readmission application, information to be considered on readmission, and steps to be taken towards restitution.

While the committee was provided with medical evidence, including a report providing a diagnosis of moderate, chronic, and major depressive disorder, the committee was, “... troubled by the absence of cogent evidence that correlates the medical dysfunction with the continuing acts of deliberate deception and misrepresentation that were the trademarks of the files reviewed before this committee. The admitted acts of misconduct included acts of commission, not just omission. It is one thing to forget or turn a cavalier blind eye; it is quite another to set upon a deliberate and protracted path of fraudulent deception, misrepresentation and theft of client funds.”

In reluctantly accepting the joint submission, the committee noted that it was unconvinced by the “scanty professional evidence demonstrating the causal linkages” between the misconduct and the anxiety, forgetfulness and impaired insight. The committee held:

“While the Committee accepts without reservation the medical diagnosis and tragic impairment of memory, attention and concentration, the Committee is not convinced that the deliberate and orchestrated deceptions of Mr. Murtha inflicted upon his many clients are explained in full by the depression and disorder which he so evidently suffers.”

- *LSA v. Juneja, 2024 ABLs 2*: This was a sanction hearing following a finding that the member was guilty of failing to comply with an undertaking to the LSA; misleading counsel; failing to be candid with the LSA; and conducting himself in a manner that brought discredit to the profession. In directing a suspension of fifteen months rather than the disbarment sought by the LSA the committee noted that one of the mitigating factors against a finding of lack of integrity was

that the member's behaviour did not, "... rise to the same level of severity as such matters as theft of trust funds or fraud"

- LSA v. Beaver, 2017 ABLs 3 (Sanction) and 2023 ABLs 4 (Appeal Committee): Following finding of conduct deserving of sanction in respect of 7 of 12 citations, including misappropriation of client trust funds over \$300,000 and failing to act with integrity, a hearing committee considered whether the appropriate sanction was a disbarment or further suspension and supervised return to practice. The member argued that he would not pose a risk to the public if allowed to return to a supervised practice after he had been removed from the stress of a difficult period in his life and had received medical treatment.

The committee directed a disbarment and noted that the misappropriations were the most serious. They were substantial, continued for an extended period of time, active steps were taken to cover up the behaviour, and the stressors to which he was subject were stressors to which any senior practitioner may be subject. Additionally, the larger issues of the "best interests of the public" and the "protection of the standing of the legal profession" required that the behaviour be denounced with the highest sanction.

The appeal committee upheld the merits and the sanction decision. In doing so, the appeal committee specifically noted the hearing committee's finding that there was no causal link between the addiction and mental health issues that would account for the misconduct. The appeal committee also commented that the member's medical reports were obtained "after the apex of the misconduct."

- LSA v. Virk, (2019) ABLs 25 (Hearing Committee) (Guilt); 2020 ABLs 4 (Hearing Committee) (Sanction); 2021 ABLs 16 (Appeal Committee); and 2022 ABCA 2: Member was found guilty of 15 of 19 citations which included matters of integrity, professional obligations and governance obligations. The LSA sought disbarment and the member requested a 12-to-14-month suspension during which treatment would be received. The member argued that consideration should be given to previously untreated mental illness that the member was diagnosed with. In response, the LSA argued that the medical evidence did not support a link between the member's mental illness and the integrity issues. While the committee accepted that the member suffered from a mental health issue, the committee did not find that there was a causal or contributory connection between the member's mental disorder and the misconduct. The appeal committee upheld 18 of the 19 findings of guilt, dismissed the appeal on sanction, and confirmed the order for disbarment. The member's appeal to the Court of Appeal was dismissed.
- LSBC v. Ross, 2024 LSBC 16: Despite member's retired status, the LSBC proceeded with disciplinary proceedings pursuant to the LSBC's responsibility to

assure the public and the profession that a resignation cannot be used to avoid the consequences of misconduct. At hearing, the member was found guilty of professional misconduct including misappropriation of trust funds, misleading clients and the LSBC; acting in a conflict of interest; breaching a trust agreement; and misleading clients in relation to a purchase of real estate. In directing disbarment, the LSBC noted that disbarment is the presumptive disciplinary action for intentional misappropriation.

104. The parties agreed that there is no rule that misappropriation automatically results in disbarment; however, there must be extraordinary circumstances to not disbar a person who engages in misappropriation of trust funds. The parties disagreed on whether the requisite extraordinary circumstances necessary to depart from an order of disbarment exist in this case.

Analysis

105. The issue to be determined by this Committee is whether it is in the best interests of the public and in the interests of the profession to permit Jivraj to resign prior to the resolution of the outstanding conduct matters.
106. If so, the next issue for determination is whether Jivraj should be permitted to resign under section 32 or directed to resign under section 61 of the *Act*.
107. The Committee has considered the factors outlined in paragraph 198 of the Hearing Guideline to determine the seriousness of the misconduct.
108. Jivraj admitted to serious misconduct including wrongful conversion and misappropriation of trust funds; acting in a conflict of interest; breaching a trust condition and an undertaking; preparing misleading and incorrect Statements of Adjustments; failing to provide competent, timely, conscientious, and diligent service; and practicing while suspended.
109. As admitted in the ASF, several people had trust funds under Jivraj's control that disappeared.
110. These actions constitute a serious risk to the public and to the reputation of the legal profession.
111. Clients should be able to have confidence that funds deposited in trust with their lawyers or held by other counsel with their consent are secure and immune from misappropriation or wrongful conversion. Further, they should be able to rely on their lawyer to prepare honest and correct documents and act solely in the client's interests absent consent to a dual retainer. Clients should also be able to rely on their lawyer to

only practice with the requisite licence or permissions from the LSA.

112. Similarly, other lawyers and the Courts should be able to rely on members of the profession to follow trust accounting rules, prepare accurate documents, and comply with their professional responsibilities to only act as a lawyer when permitted to do so.
113. When clients, other lawyers, and the Courts are unable to rely on a member to conduct themselves in accordance with the *Act*, the Rules, and the Code of Conduct, particularly with respect to the holding of trust funds, compliance with undertakings, and preparation of documents, the ability of the legal system to function properly is hindered.
114. Jivraj admitted to breach of the trust accounting rules, misappropriation and wrongful conversion of trust funds, and breaching a trust condition and undertaking. The wrongful conversion of trust funds was in more than one matter. Jivraj did not self-report any of the matters contained in the ASF.
115. The Committee is mindful that throughout the investigation, Jivraj cooperated with the LSA and ultimately signed the ASF. However, that was after the actions underlying the citations came to light.
116. The LSA is tasked with governing the profession in the best interests of the public. The admitted misconduct has no place in the profession.
117. The harm caused was significant. While the parties agree that the value of the misappropriated funds was approximately \$27,000.00, over the course of the misconduct Jivraj created ten false deposits in PCLaw in the total amount of \$932,819.23 and there was a trust shortage of approximately \$622,000.00.
118. At the hearing, the parties appeared to agree that the trust shortage amount has been reduced to approximately \$300,000.00 as a result of the efforts of the custodian and others to collect and repay trust funds.
119. In addition to the trust issues, harm was caused to Jivraj's clients when he acted in a conflict of interest. Harm was caused to other parties when Jivraj breached undertakings to pay out mortgages as required.
120. The harm that was caused by Jivraj's actions was reasonably foreseeable at the time of the misconduct. Specifically, when Jivraj intentionally entered misinformation into PCLaw and wrote trust cheques in contravention of the trust accounting rules, it was reasonably foreseeable that these actions could result in opposing parties or clients being unable to negotiate his trust cheques.
121. There were multiple incidents involved, the majority of which occurred between December 2017 to March of 2020.

122. Upon application of the paragraph 198 factors from the Hearing Guideline, the Committee finds that Jivraj's admitted misconduct is extremely serious.
123. Paragraph 199 of the Hearing Guideline provides that a sanction may vary depending on whether the member acted intentionally, knowingly, recklessly, or negligently.
124. Jivraj intentionally made the inaccurate and misleading entries in PCLaw and then wrote trust cheques based on the misinformation. Jivraj also created inaccurate Statements of Adjustments and attempted to close residential property transactions based on the inaccurate documents he drafted.
125. On cross-examination, Dr. B agreed that Jivraj knew what he was doing was wrong and did it anyways and Jivraj was indifferent to the consequences.
126. The Committee finds that Jivraj engaged in the misconduct intentionally, knowingly, and recklessly.
127. The Committee has considered the factors outlined in paragraph 204 of the Hearing Guideline. In applying the factors to Jivraj, the following are considered either mitigation or neutral:
 - At the time of the hearing, Jivraj did not have a prior discipline record. He was in practice for almost six years.
 - While Jivraj did not self-report his misconduct, he participated with the LSA Investigation, willingly provided the ASF which contains detailed admissions of guilt and cooperated with the LSA in the discipline proceedings.
 - At the Hearing, Jivraj admitted that he had made mistakes, apologized, and stated that he would like to make restitution at some point in the future.
128. Both parties also made submissions on Jivraj's mental health and personal circumstances (financial difficulties, relationship issues, and practice matters). However, they disagreed on the extent to which these matters are relevant considerations in determining whether Jivraj should be permitted to resign under section 32 or section 61.
129. Based on the evidence before this Committee it is clear that Jivraj has had difficult personal, medical, and financial matters over the past number of years. [Medical history redacted] The Committee empathizes with Jivraj and wishes him continued success in his recovery efforts.

130. As noted in the *McKenzie* text, the Committee must determine whether the evidence led is sufficient to demonstrate a causal link between Jivraj's mental health concerns and the admitted misconduct.
131. The admitted misconduct occurred between approximately December of 2017 when Jivraj was retained to assist with the sale of a residential property to March 12, 2020.
132. [Medical information redacted]
133. While the Committee is empathetic with Jivraj's mental health concerns, the Committee is not satisfied that the evidence provided demonstrates the requisite causal link between Jivraj's depression and the admitted misconduct.
134. [Medical information redacted]
- ...
140. The medical evidence is not considered by the Committee to be a mitigating factor.
141. The Committee also considered the following in coming to its conclusion:
- At the Hearing it was Jivraj's evidence that he has not made restitution but intends to do so in the future.
 - Jivraj has continued to see Dr. B since October of 2022. In Dr. B's second report he noted that by the Spring of 2023, most of Jivraj's symptoms had resolved and Jivraj seems to be making excellent progress.
 - Jivraj misappropriated approximately \$27,000.00 for his own use and benefit. It is unclear whether Jivraj benefited from the balance of the admitted misconduct. This is an aggravating factor.
 - There is no evidence that Jivraj's admitted misconduct involved taking advantage of a vulnerable party. This is neither a mitigating nor an aggravating factor.
142. The ASF contains a number of admissions of very serious misconduct, including the misappropriation and wrongful conversion of trust funds. The Committee has considered the nature of the admitted misconduct and concludes that the admissions would likely result in disbarment if the matter were to proceed to a hearing and the citations were proven.
143. There are no disputed facts. On consideration of all of the section 198 and 204 factors, they would not mitigate against disbarment or render disbarment an unlikely outcome if the matter were to proceed to a hearing.

144. Further, integrity is the most important attribute of any lawyer. Unlike the *McGechie* case, the admitted misconduct was not caused by incompetence. It was intentional, deliberate, and orchestrated. The admitted misconduct undermines the effective operation of the legal system and the regulation of the legal profession.
145. Jivraj's admitted misconduct was substantial, continued over time, and active steps were taken to cover up the misconduct. While the Committee is sympathetic to the personal, financial, and professional stressors to which Jivraj was subject, the stressors to which Jivraj was subject are stressors to which any member of the profession may be subject from time to time. There were no extraordinary circumstances present that would militate in favour of avoiding disbarment.
146. The Committee has considered the effect of a section 61 resignation on any potential application for reinstatement by Jivraj. The Committee is satisfied that a section 61 resignation and its impact on a reinstatement application is appropriate in this case.
147. Both parties agreed that given the nature of the admissions in the ASF that a referral to the Attorney General is appropriate. The Executive Director is directed to comply with section 78 of the *Act*.

Decision

148. The Committee finds that the ASF is in an acceptable form.
149. The Committee finds that it is in the best interests of the public and in the interests of the profession to permit Jivraj to resign prior to the resolution of the outstanding conduct matters.
150. In this case, a resignation under section 61 is necessary to preserve public confidence, to protect the public, and to deter other lawyers from breaching the trust of their clients.
151. The Committee accepts the undertakings and agreements provided by Jivraj dated January 18, 2023.
152. The Committee has reviewed the costs of hearing this application as prepared by the LSA in the amount of \$54,000.00. There is sufficiently serious professional misconduct that warrants an award of costs. The Committee accepts the parties' joint submission that Jivraj will not have to pay costs of \$54,000.00 immediately. Rather, these costs will only become payable in the event that Jivraj applies for reinstatement.
153. The Committee accepts Jivraj's application for resignation and directs that such resignation be under section 61. The resignation is effective immediately.

154. A resignation under section 61 carries the force of a disbarment under section 1(c) of the *Act*. Pursuant to subsection 61(4) of the *Act*, the Committee directs that the following information to be entered into the roll:
- The roll shall reflect that Jivraj’s resignation under section 61 of the *Act* was directed on October 8, 2024;
 - Details of this decision shall be noted in the roll, including the undertakings and agreements given, the costs direction and the ASF put before this Committee.

Concluding Matters

155. All of the exhibits, hearing materials, and this report, with the exception of any medical reports and information, 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 Jivraj will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).
156. The medical information will remain an official part of the record of these proceedings but will not be made available to the public.
157. The competence of Jivraj is not a factor that should be taken into consideration with respect to any term or condition upon which Jivraj may make an application for reinstatement in the future.
158. A Notice to the Profession will be issued.
159. A Notice to the Attorney General is required.

Dated October 8, 2024.

Sharilyn Nagina, KC

Glen Buick

Levonne Louie