

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

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF AJAY JUNEJA
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

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

Appearances

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

Sanction Hearing Date

August 24, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION PHASE

Overview

1. A conduct hearing was held on July 26, 27, 28, 29, 2021 and September 20, 21, 2021 and for the reasons set out in its decision dated April 13, 2022 (Merits Decision), the Hearing Committee (Committee) found Ajay Juneja guilty of conduct deserving of sanction. This Committee was convened on April 5, 2023, pursuant to section 59(1)(b) of the *Legal Profession Act (Act)*, to hear evidence and arguments regarding the appropriate sanction against Ajay Juneja. The following were the citations for which the Committee found Mr. Juneja guilty:

Complaint #1

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

- b) It is alleged that Ajay Juneja misled counsel as to his authorization to act on a matter.
- c) It is alleged that Ajay Juneja failed to comply with an undertaking, in particular undertaking #9 from Undertakings to the Law Society of Alberta dated March 3, 2015.
- d) It is alleged that Ajay Juneja failed to be candid with the Law Society.

Complaint #2

- e) It is alleged that Ajay Juneja conducted himself in such a manner that brought discredit to the profession.
- f) It is alleged that Ajay Juneja failed to be candid with the Law Society.

Preliminary Matters

- 2. As noted in the Merits Decision there were no objections to the constitution of the Committee, or its jurisdiction and a public hearing proceeded. No objections or private hearing applications were made during this sanction phase, so the sanction hearing continued in public.

Personal Background

- 3. Mr. Juneja was admitted to the Alberta Bar in 2004 and practiced and resided in Edmonton, Alberta. Mr. Juneja was 44 years old at the time of the Hearing and continues to be employed at the JC law firm, where he has been employed for several years and where he carries on a criminal law and personal injury practice. Mr. Juneja's supervisor has referred to him as a "very good lawyer".

Findings of the Hearing Committee

- 4. The facts related to the sanctionable conduct are set out in the Committee's Merits Decision. This phase of this hearing is to consider the appropriate sanction for that conduct. In brief the specific findings of misconduct were as follows:

Citation 1

Mr. Juneja was subject to an undertaking to the LSA to restrict his practice to criminal and personal injury law and he breached that undertaking by acting in two separate matters that were neither criminal nor personal injury matters.

Citation 2

Mr. Juneja misled opposing counsel as to his authority to act on a matter and in particular Mr. Juneja advised that lawyer that he was acting in accordance with his current practice restrictions, which was untrue, and with the authorization of the LSA, which was also untrue.

Citation 3

Mr. Juneja breached his undertaking to abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs were prescribed, by consuming cocaine, cannabis and alcohol.

Citation 4

Mr. Juneja was found guilty of failing to be candid with the LSA when he falsely indicated to the LSA that he had a medical prescription for marijuana and that he had not used alcohol or cocaine.

Citation 5

Mr. Juneja was found guilty of discreditable conduct when he engaged in a physical altercation with security staff at an after-hours night club and with the police.

Sanction Finding

5. After reviewing all of the evidence, exhibits, relevant jurisprudence, hearing witness testimony and the arguments of the LSA and Mr. Juneja, and for the reasons set out below, the Committee finds that the appropriate sanction is that Mr. Juneja be suspended for a period of 15 months. The suspension will take effect 14 days from the date this sanction decision is rendered.

Law Society Submissions on Sanction

6. The LSA sought disbarment of Mr. Juneja and LSA counsel put forward the following arguments:
 - (a) Mr. Juneja has a significant discipline record that included the following:

August 11, 2011

The first hearing in 2011 saw Mr. Juneja suspended for four and a half months (along with a reprimand and fine). Of the 11 citations the following were the most notable:

- Swearing false Affidavits of Execution and commissioning an Affidavit which bore a false statement.
- Failing to be candid with the LSA.
- Misleading clients.
- Failing to provide the LSA in a timely manner with information and materials.
- Preparing a transfer of land with the intent of deceiving others regarding the circumstances of the transfer.

- Acting in an actual or potential conflict of interest without taking safeguards to protect client rights.

In this matter the hearing committee stated that they would have imposed a considerably longer suspension had Mr. Juneja not already been effectively suspended since 2020 by virtue of practice restrictions.

June 19, 2013

The second hearing in 2013 resulted in a one-day suspension and costs of \$25,000.00. The most notable citations were as follows:

- Breaching an undertaking given to the LSA.
- Breaching an undertaking to another lawyer.

Mr. Juneja had been interim suspended on May 29, 2012. In view of this interim suspension that hearing committee would have ordered a much longer suspension but for the previous “effective 33 months” that Mr. Juneja had been suspended.

July 14, 2014

At the 2014 Hearing Mr. Juneja received a two-month suspension and an order to pay costs of \$35,000.00. The two citations dealt with failing to serve clients in a “conscientious, diligent, and efficient manner”.

- (b) Mr. Juneja had been found guilty previously of misconduct involving ungovernability as it relates to prior breaches of undertakings to the LSA and that this failure by Mr. Juneja to comply with his undertakings is indicative of Mr. Juneja’s ungovernability.
- (c) Mr. Juneja’s misleading of another lawyer involves conduct that brings into question his integrity.
- (d) Prior chances to reform have not proven successful and the only remaining sanction is disbarment. Past predictions about Mr. Juneja having “seen the light” and that he now accepts LSA governance have proven to be incorrect.
- (e) Mr. Juneja had been previously found guilty of misconduct involving both ungovernability and a lack of integrity.
- (f) The fighting with the security staff and police officers is evidence of misconduct that impacts the reputation of the legal profession.

7. On the issue of governability, the LSA specifically argues that the following misconduct are indicators of ungovernability:
- (a) Failing to be candid with the LSA as per citations 4 and 6; and
 - (b) Breaching an undertaking to the LSA as per citations 1 and 3.
8. The LSA further referenced the following decisions where disbarment was ordered as a result of ungovernability:

*Law Society of Alberta v Ihensekhien-Eraga*¹
*Law Society of Alberta v. Dewett*²
*Law Society of Alberta v. Hammoud*³
*Riccioni v Law Society of Alberta*⁴
*Virk v Law Society of Alberta*⁵
*Mclean (Re)*⁶
*Park v. Royal College of Dental Surgeons of Ontario*⁷
*Law Society of Alberta v. Clarence Ewasiuk*⁸
*Law Society of Alberta v Beaver*⁹

Mr. Juneja's Submissions on Sanction

9. Counsel for Mr. Juneja generally argued as follows:
- (a) Disbarment is disproportionate to prior sanctions imposed for similar conduct even for members with similar disciplinary records. Disbarment overemphasizes the disciplinary record of Mr. Juneja and ignores the mitigating factors such as the prior conduct matters having occurred over a decade ago and in different circumstances.
 - (b) The most common penalty for breaching undertakings is the imposition of a fine and for failing to be candid and conduct unbecoming is a reprimand.

¹ *Law Society of Alberta v Ihensekhien-Eraga*, 2023 ABL 13.

² *Law Society of Alberta v. Dewett*, 2016 ABL 13.

³ *Law Society of Alberta v. Hammoud*, 2013 ABL 9.

⁴ *Riccioni v Law Society of Alberta*, 2015 ABCA 62.

⁵ *Virk v Law Society of Alberta*, 2022 ABCA 2.

⁶ *Mclean (Re)*, 2016 LSBC 6.

⁷ *Park v. Royal College of Dental Surgeons of Ontario*, 2021 ONSC 8088.

⁸ *Law Society of Alberta v. Clarence Ewasiuk*, 2012 ABL 16.

⁹ *Law Society of Alberta v Beaver*, 2023 ABL 4.

- (c) The medical professionals treating Mr. Juneja have concluded that Mr. Juneja's prior psychological condition had affected his behaviour at the relevant times, which condition is in remission and can be effectively treated.
- (d) Mr. Juneja has been in active practice since 2015 and he has no outstanding complaints or citations. Since returning to practice in 2015 Mr. Juneja has conducted over 15 homicide trials and appeals and appeared in some 26 written cases.
- (e) The emphasis in sanctioning must be upon the protection of the public interest and an assessment of the degree of risk of allowing Mr. Juneja to continue practicing.
- (f) Mr. Juneja should not be re-sentenced for past conduct.

Citation 1

- 10. In respect of citation 1 (breach of undertaking to restrict practice to criminal and personal injury law), Mr. Juneja argues that the two breaches were isolated incidents, were "errors in judgment", no actual clients were represented, and Mr. Juneja received no material benefit. Mr. Juneja had received advice and directions from his employer and supervisor, and Mr. Juneja did not deliberately or with intent violate his undertakings.
- 11. Mr. Juneja relies upon the Alberta Court of Appeal decision in *Jinnah v. Alberta Dental Association and College*¹⁰ for the proposition that intent can be a factor when considering an appropriate sanction. The *Jinnah* Court stated at paragraph 121:
 - ... we follow the lead of the criminal law. Section 19 of the Criminal Code declares that "[i]gnorance of the law by a person who commits an offence is not an excuse for committing that offence". But this provision does not preclude a finding that an actor who does not appreciate that a course of conduct is wrong or unlawful is less blameworthy than a person who does.
- 12. Mr. Juneja argues that he believed he was acting within the confines of his undertakings based on the directions and advice of his supervisor. Mr. Juneja was instructed by his supervisor to deal with both matters that gave rise to the two breaches. To that extent Mr. Juneja did not deliberately violate his undertakings. Furthermore, despite the two breaches of undertakings, Mr. Juneja was substantially in compliance with his practice restrictions.

¹⁰ *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336.

Citation 3

13. Regarding citation 3 (breach of undertaking to abstain from alcohol and all other psychoactive substances), Mr. Juneja argues that (i) he was subject to biological testing by the LSA for two years following his 2015 reinstatement, (ii) that his references confirm that Mr. Juneja does not consume alcohol or non-prescription drugs, (iii) that the psychologist report confirms that Mr. Juneja's addictions are controllable, and his alcoholism is in remission, (iv) that Mr. Juneja continues to function at a high level in his practice of law, and (v) that Mr. Juneja has not shown any signs of alcohol or drug use while at work.
14. Mr. Juneja provided reference letters from co-workers and family, along with medical reports, which confirm that Mr. Juneja is a non-drinker, and he does not consume illegal substances.

Citation 5

15. Regarding citation 5 (altercation with security staff and the police), Mr. Juneja states that this took place in the middle of the night in a commercial area and in the police station and that this would not likely impact the public's confidence in the integrity of the legal profession. Mr. Juneja received an absolute discharge and no members of the public have been affected by Mr. Juneja's conduct.
16. In respect of the appropriate sanction for similar conduct, Mr. Juneja references three decisions:
 - (a) In *Law Society of Alberta v. Tralenberg*¹¹ the member attended the front counter at a police station and asked to speak to a client who was in custody. The officer was not able to accommodate this, and the situation escalated such that the police attempted to remove the lawyer from the police station. The member was placed in a headlock, taken to the ground, and subsequently charged with resisting arrest. The sanction in this case was a reprimand.
 - (b) In *Law Society of Alberta v Egbase*¹² the member assaulted an unrepresented party in a divorce action just outside the courtroom. The lawyer was charged with assault and completed the Alternative Measures Program. Initially the member denied the assault to the LSA, but later admitted same. The lawyer received a fine of \$4,000.00 for each count of failing to be candid and conduct unbecoming.

¹¹ *Law Society of Alberta v. Tralenberg*, 2011 ABLIS 13.

¹² *Law Society of Alberta v Egbase*, 2020 ABLIS 12.

- (c) In *Law Society of Alberta v Rau*¹³ the member had a history of unprofessional conduct including abusive and aggressive behaviour and using profanity towards staff at a remand center. Despite a prior record the member was sanctioned with a reprimand and \$2,000.00 in costs.

Mitigating Factors

17. By way of mitigating factors Mr. Juneja relies upon the following:

- a) The misconduct in question was some four and five years ago and there is no evidence of any re-offending, which mitigates the penalty. For this proposition Mr. Juneja cites the Alberta Court of Appeal case of *Wachtler v. College of Physicians and Surgeons of Alberta*¹⁴ where the Court stated, in part, at paragraph 48:

“However, when many years pass between the incidents that led to the convictions and the impositions of the penalty, the passage of time operates to disconnect the event from the penalty. First, the event will become some vague matter arising within the professional’s practice from long ago. Second, the professional may well have self-remediated the problem.”

- b) Since the matters occurred which gave rise to the citations, Mr. Juneja has completed three separate anger management programs, seen four psychologists and a psychiatrist and has received treatment from a physician. The medical professionals have all found that Mr. Juneja is fit to practice and that any mental health or addictions issues which played a part in the offending conduct are in remission.

Governability

18. On the issue of governability Mr. Juneja references the “Hall” factors, which factors were cited in the Law Society of British Columbia case of *Lessing (Re)*¹⁵ at paragraphs 10 to 12, where the hearing panel wrote:

The Rules do not provide a definition of ungovernability. Various Law Society tribunal hearing panels have considered what constitutes ungovernability.

Generally speaking, a lawyer must accept that their conduct will be governed by the Law Society, they must respect and abide by the rules that govern their conduct and they must deal with the Law Society in an honest, open and

¹³ *Law Society of Alberta v Rau*, 2021 ABLS 24.

¹⁴ *Wachtler v College of Physicians and Surgeons of Alberta*, 2009 ABCA 130.

¹⁵ *Lessing (Re)*, 2022 LSBC 7.

forthright manner at all times (*Law Society of BC v. Spears*, 2009 LSBC 28, at paras. 7 – 9).

Ungovernability may include a pattern of pervasive, serious misconduct, illustrative of wanton disregard and disrespect for the regulatory process. In *Hall*, at paras. 27 and 28, the hearing panel identified a number of factors that may individually or collectively give rise to a finding of ungovernability when present, as follows:

- (a) a consistent and repetitive failure to respond to the Law Society's inquiries;
- (b) an element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records;
- (c) some element of misleading behaviour directed to a client and/or the Law Society;
- (d) a failure or refusal to attend at the discipline hearing convened to consider the offending behaviours;
- (e) a discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances;
- (f) a history of breaches of undertaking without apparent regard for the consequences of such behaviour; and
- (g) a record or history of practicing law while under suspension.

19. Applying the "Hall" factors, Mr. Juneja argues that he did not fail to respond to the LSA, there were no issues regarding client records or property, no issues of misleading clients, no refusal to attend hearings and no history of practicing law while suspended. Given that most of these factors do not apply, it cannot be said that Mr. Juneja is ungovernable.
20. On the issue of governability Mr. Juneja further argued that the decision in *Law Society of Alberta v Carlson*¹⁶ was directly applicable to Mr. Juneja's case. In this case Mr. Carlson was found guilty of failing to serve his client in a timely manner and that he failed to reply to communications from the LSA. Mr. Carlson was suspended for six months. Mr. Carlson had the following prior findings of guilt:

¹⁶ *Law Society of Alberta v Carlson*, 2023 ABL 2.

- a) The member had a three-month suspension in 2012 in respect of improperly accepting compensation other than the appropriate legal fees from a party seeking to achieve an improper purpose, representing clients in business transactions in breach of securities law and failing to be candid with the LSA.
 - b) In another matter from 2019, Mr. Carlson was found guilty of failing to sign a court order, failing to respond to communication from opposing counsel and failure to finalize and file an order on behalf of his client. By way of joint submission Mr. Carlson was suspended for one month.
21. It is argued on behalf of Mr. Juneja that the past conduct reflected in Mr. Carlson’s disciplinary record was dated, occurred in very different circumstances and was more serious. It is argued that a more severe penalty than a six-month suspension is not warranted in this case.
22. The following cases of *Law Society of Alberta v. Hansen*¹⁷ and *Law Society of Alberta v Green*¹⁸, were also argued by Mr. Juneja:
- a) Mr. Hansen admitted to failing to serve and advertising breaches for which he was reprimanded and ordered to pay costs and a fine. Mr. Hansen had a disciplinary record of five complaints between 1982 and 2009, four of which attracted a reprimand, costs and a fine.
 - b) Mr. Green was found guilty of assisting a disbarred lawyer to practice law and breaching solicitor-client privilege. This member had a disciplinary record going back to 1999 which included breaching undertakings, failing to be candid with the LSA, misappropriating small amounts of trust funds and failing to follow accounting rules. Mr. Green was suspended for 12 months, reprimanded and fined.

Sentencing Factors and Ranges

23. Mr. Juneja argues that the range of sentencing in similar cases would suggest that either a fine or reprimand is most appropriate, even where a member has a prior record. In addition to the cases cited above, Mr. Juneja referenced the following cases:
- a) *Nair v College of Physicians and Surgeons of Alberta*¹⁹ where at paragraph 7 the Court of Appeal reduced a one-year suspension to six months on the basis that a one-year suspension would “wreak havoc” with a physician’s practice, “...driving

¹⁷ *Law Society of Alberta v. Hansen*, 2013 ABLS 5.

¹⁸ *Law Society of Alberta v Green*, 2022 ABLS 20.

¹⁹ *Nair v. College of Physicians and Surgeons of Alberta*, 1988 ABCA 288.

many patients to other doctors”, and “would ordinarily have consequences extending beyond a year.”

- b) In *Law Society of Alberta v. Burchak*²⁰ the member was inactive. The member proceeded to act for his mother-in-law on a pro-bono basis; he sent correspondence and filed documents identifying himself as a lawyer and he engaged in discourteous conduct by swearing in a telephone conversation. The lawyer in question received a reprimand.
- c) In the case of *Law Society of Alberta v. Andrews*²¹ the member breached an undertaking to the LSA not to engage in private practice by appearing in court on multiple occasions for adjournments and representing a client on an indictable matter. The lawyer received a reprimand.
- d) In *Law Society of Alberta v. Demong*²² the member faced seven citations including multiple counts of practicing while not entitled to so, misleading others about his status and failing to respond to the LSA. In this case the lawyer was reprimanded.
- e) In *Law Society of Alberta v LeDrew*²³ a member failed to fulfill a real estate trust condition. Mr. LeDrew received a reprimand, a fine and costs. This member, unlike the above cases, had four prior disciplinary convictions which included breaching trust conditions, failing to disclose that trust monies had been dispersed, failing to honour undertakings and breaching trust conditions, failing to respond on a timely, complete and prompt manner to the LSA (three times), failing to follow LSA accounting rules, breaching an undertaking to discharge a mortgage, failing to serve a client in a conscientious, diligent and efficient manner. In 2022, Mr. LeDrew was again before the LSA where he was found guilty of failing to comply with an undertaking and suspended for two-weeks.²⁴

Analysis: Governability

24. The Alberta Court of Appeal in *Alsaddi v Alberta College of Pharmacy*²⁵ has defined ungovernability as follows at paragraph 68:

...A professional can be said to be ungovernable if he or she fails to accept the authority of the professional organization or intimates that he or she is not bound by rules and standards of the profession...

²⁰ *Law Society of Alberta v. Burchak*, 2008 LSA 7.

²¹ *Law Society of Alberta v Andrews*, 2020 ABL 35.

²² *Law Society of Alberta v Demong*, 2012 ABL 14.

²³ *Law Society of Alberta v LeDrew*, 2020 ABL 5.

²⁴ *Law Society of Alberta v Ledrew*, 2022 ABL 27.

²⁵ *Alsaddi v Alberta College of Pharmacy*, 2021 ABCA 313.

25. Of further guidance is the decision in *Law Society of Upper Canada v. Shifman*²⁶ where the Appeal Division of the Law Society of Upper Canada set out a two-part test for ungovernability at paragraph 25:

We find it helpful to restate the principles to be considered in relation to ungovernability as a two-part analysis:

- 1) Is the nature, duration and repetitive character of the licensee's present and past misconduct sufficiently serious that it suggests an unwillingness or inability to be governed by the Law Society, notwithstanding progressively increased penalties for repeated incidents of misconduct?
 - 2) If so, in light of all of the circumstances, is revocation appropriate? This involves balancing the nature of the misconduct and disciplinary history against mitigating factors including:
 - a. any character evidence;
 - b. the existence of remorse and a recognition and understanding of the seriousness of the misconduct;
 - c. evidence that the licensee is willing to be governed by the Society;
 - d. medical or other evidence that explains (although does not excuse) the misconduct;
 - e. the likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken;
 - f. the licensee's ongoing co-operation with the Society in addressing the outstanding matters that are the subject of the misconduct and other regulatory matters.
26. On the issue of governability, Mr. Juneja references the case of *Lessing*²⁷ and in particular the "Hall" factors as described above in paragraph 18. To reiterate, the *Lessing* case defines ungovernability as arising "where there is evidence of a consistent unwillingness to comply with the Law Society as a regulator, or a wanton disregard and disrespect for the regulatory processes that govern the lawyer's conduct."
27. We see no material distinction among the ungovernability definitions in the *Lessing*, *Alsaddi* or *Shifman* decisions. The common aspects of these definitions are that there is:(1) a failure by a member to accept the authority of the profession and an

²⁶ *Law Society of Upper Canada v. Shifman*, 2014 ONLSTA 21.

²⁷ *Lessing*, paragraphs 11 and 12.

unwillingness or inability to be governed by the LSA or that (2) the member wantonly disregards and disrespects the rules and regulatory processes of the LSA.

28. Following the *Alsaddi* decision, and with an adoption of the *Lessing* and *Shifman* factors, this Committee adopts the following test and factors for a finding of ungovernability:

Has the member failed to accept the authority of the LSA, has the member intimated that he or she is not bound by the rules and standards of the profession or has the member shown a wanton disregard and disrespect for LSA regulatory processes as maybe evidenced by the following, non-exclusive, factors:

- a) Has the member shown a consistent and repetitive failure to respond to the LSA's inquiries.
- b) Does the member have a discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.
- c) Does the member have a history of breaches of undertaking without apparent regard for the consequences of such behaviour.
- d) Has the member shown an element of neglect of duties and obligations to the LSA with respect to trust account reporting and records.
- e) Are some elements of any misleading behaviour directed to a client, the courts, other counsel and/or the LSA.
- f) Has there been a failure or refusal by the member to attend at the discipline hearing convened to consider the offending behaviours.
- g) Does the member have a record or history of practicing law while under suspension.

29. A finding of ungovernability may often result in disbarment. However, there are considerations which would mitigate against disbarment of the member, including such non-exclusive factors as the following:

- i. Any character evidence.
- ii. Is there a past discipline record.
- iii. The existence of remorse and a recognition and understanding of the seriousness of the misconduct.

- iv. Evidence that the licensee is willing to be governed by the LSA.
 - v. Medical or other evidence that explains (although does not excuse) the misconduct.
 - vi. The likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken.
 - vii. The member's ongoing co-operation with the LSA in addressing the outstanding matters that are the subject of the misconduct and other regulatory matters.
 - viii. Has the member admitted a number of the allegations against him.²⁸
30. The Committee finds that Mr. Juneja is ungovernable and that he has failed to accept the authority of the LSA, for the following reasons:
- a) Mr. Juneja has had three prior disciplinary hearings in 2011, 2013 and 2014 which included failing to be candid with the LSA and breaching an undertaking given to the LSA.
 - b) At the 2013 hearing Mr. Juneja, through his counsel and by way of reference letters, indicated that he was "willing to be governed". Despite that assurance, Mr. Juneja has again further breached undertakings to the LSA.
 - c) Mr. Juneja's discipline record has involved allegations of professional misconduct over a period of time and involving a series of different circumstances.
 - d) There is an element of misleading behaviour directed towards counsel.
31. As already stated, the usual penalty for ungovernability is disbarment. However, mitigating factors can be of such sufficiency as to warrant a suspension, albeit often a long one. While a finding of ungovernability stands, the Committee is not prepared to disbar Mr. Juneja for the following reasons:
- a) While there is certainly a past history of failing to respond to the LSA, failing to be candid with the LSA, breaching and failing to comply with undertakings, this Committee does not view this past disciplinary record as rising to a level of being a wanton disregard and disrespect for the regulatory processes.
 - b) Despite the breaches of undertaking, Mr. Juneja has not shown any unwillingness to respond to the LSA.

²⁸ *Alsaadi* at paragraph 69.

- c) The breach of undertaking in respect of the practice restrictions was not done in an intentional manner given the erroneous advice from Mr. Juneja's principal. It was certainly careless, if not negligent, of Mr. Juneja to simply accept that advice, but it was not done with a clear intention to breach the undertakings.
- d) The past transgressions were somewhat distant in time and involved different circumstances.
- e) Mr. Juneja has provided character evidence. In particular he provided eleven letters of reference from lawyers who confirmed that Mr. Juneja is a competent and capable lawyer. In addition, there were five personal reference letters about the positive character of Mr. Juneja.
- f) Mr. Juneja provided medical evidence from psychologists, a psychiatrist and a general practitioner who were principally dealing with treating Mr. Juneja for depression and anxiety and the use of alcohol and illicit substances as a coping mechanism. A common theme running throughout Mr. Juneja's involvement with the LSA has revolved around alcohol and substance abuse. We do note that none of the medical evidence from Mr. Juneja supports a conclusion that these issues excuse the misconduct. However, it appears from the medical evidence and the reports of third parties that Mr. Juneja is making progress in addressing these personal issues.
- g) There is less forgiveness in respect of the breach of undertaking the requirement for abstention from alcohol and all other psychoactive (mood altering) substances. While Mr. Juneja disputed the positive lab tests for cocaine and alcohol consumption, it was found by this Committee that those tests were valid.
- h) Mr. Juneja has not had any further disciplinary matters since the within complaints, and to that extent there has not been a recurrence of similar misconduct.

Analysis: Integrity

32. It is self-evident that integrity is a fundamental aspect of being a lawyer. Integrity lies at the heart of ensuring public protection and public confidence in the profession. We are not aware of any case authority which attempts to define "integrity", though the Pre-Hearing and Hearing Guideline (June 3, 2022) (Guideline) provides some assistance at paragraph 203:

Lawyers who by their conduct have proven to be lacking in integrity may lose their right to practice law. The professional obligation to act with integrity is violated by the following types of serious misconduct:

- a. misappropriation or wrongful conversion of client funds or property;
 - b. intentional interference with the administration of justice;
 - c. intentional misrepresentation to a client, the court or the Law Society;
 - d. false swearing (e.g., of an affidavit or in commissioning an affidavit);
 - e. fraud, theft or extortion; or
 - f. any misconduct involving dishonesty or deceit.
33. Mr. Juneja made false statements to another lawyer about his ability to act on a specific matter, which false statements could have misled that lawyer. The Committee views this misconduct as raising a significant concern about the integrity of Mr. Juneja in that he was not truthful. The Committee is not however prepared to find that Mr. Juneja lacks integrity. Mitigating against a finding of a lack of integrity are the following considerations:
- a) The behaviour does not rise to the same level of severity as such matters as theft of trust funds or fraud.
 - b) The incident appears to be a one-time event.
 - c) Mr. Juneja appears to have believed that he was acting in accordance with his practice restrictions.
 - d) No one, including the opposing counsel, was harmed by the untruthfulness of the false statements.

Sanctioning Factors and Purpose

34. Section 49(1) of the *Act* sets out the following factors to be considered in determining the appropriate sanction:

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

(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.

35. The role of this Committee is to: (a) ensure that the public is protected from acts of professional misconduct and to (b) protect the public's confidence in the integrity of the profession.²⁹ To achieve these purposes there must be a proper denunciation of the conduct. The Guideline provides that these fundamental aspects are crucial to the independence of the profession and to a proper functioning of the administration of justice.³⁰
36. In addition to the above noted fundamental sanctioning principals, the following are additional purposes set out in the Guideline³¹:
- Specific deterrence of the lawyer;
 - Where appropriate to protect the public, preventing the lawyer from practicing law through disbarment or suspension;
 - General deterrence of other lawyers;
 - Ensuring the LSA can effectively govern its members; and
 - Denunciation of the misconduct.
37. Sanctions must be purposeful such that the factors that relate most closely to the fundamental purposes outlined above carry more weight than others. No one factor is greater than any other factor and the "ultimate sanction must be measured, proportionate and reasonable."³²

Precedential Decisions

38. A hearing committee should not strictly be bound by precedent. However, it is also important that there not be undue disparity with sanctions imposed in other cases.³³
39. A number of prior decisions were put before the Committee by both the LSA and Mr. Juneja for consideration on sanction. Although not binding upon the Committee, we have reviewed all the cases submitted by both parties. These cases range from a reprimand to a disbarment. While the Committee found the decisions informative, we cannot say that any one case was more conclusive or persuasive. To the extent possible, the Committee has endeavoured to avoid undue disparity with the sanctions imposed in other cases.

²⁹ Guideline, paragraph 185.

³⁰ Guideline, at paragraph 185.

³¹ Guideline, paragraph 186.

³² *Alsaadi* at paragraph 65.

³³ Guideline, at paragraph 206.

Analysis: Sanctioning

40. In considering the appropriate sanction the Committee has considered the following aggravating factors:
- a) The prior and significant discipline record of Mr. Juneja.
 - b) That Mr. Juneja appears ungovernable.
 - c) The misleading of another lawyer is particularly troublesome.
 - d) At the time of the misconduct Mr. Juneja had been in practice for some 14 years and he simply should have known better and conducted himself accordingly.
 - e) Mr. Juneja has not acknowledged any of his wrongdoings and nor has he expressed remorse.
 - f) While the misconduct of Mr. Juneja does not to any notable degree pose a risk to the public, the misconduct does constitute a risk to the reputation of the legal profession.
41. The Committee has also considered the following mitigating considerations:
- a) Mr. Juneja has not attracted any further disciplinary matters since 2015.
 - b) Mr. Juneja appears to be taking steps towards addressing any personal health and addiction matters.
 - c) A number of other lawyers have spoken highly of Mr. Juneja's abilities as a lawyer.
42. Section 72(1) of the *Act* sets out three sanctioning options:
- 72(1) If a Hearing Committee finds that a member is guilty of conduct deserving of sanction, the Committee shall either:
- (a) order that the member be disbarred,
 - (b) order that the membership of the member be suspended during the period prescribed by the order, or
 - (c) order that the member be reprimanded.

43. The Guideline³⁴ provide some clarification on the distinction between disbarment and suspension:

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.

Suspension is appropriate for the denunciation of serious or repeated misconduct where it is reasonable to believe that temporarily removing the lawyer from the profession will result in compliance with professional standards in the future. Aggravating and mitigating factors may be recognized in determining the length of the suspension.

44. As further stated in the Guideline: "Each type of sanction fulfills the dual purpose of specific deterrence for the individual lawyer and general deterrence for the profession."³⁵ Disbarment is most appropriate where there is a possibility of a recurrence of the conduct. Suspension is suitable for admonishment of serious or repeated misconduct. The fundamental question is what purpose does the imposed sanction serve? To that question the Committee states:
- a) A lengthy suspension will act as a specific deterrence to Mr. Juneja that should reasonably result in his future compliance with professional standards. Furthermore, a lengthy suspension will also function as a general deterrent to other lawyers.
 - b) The Committee does not view the conduct as rising to a serious enough level that it will be repeated in the future and thus disbarment is not appropriate.
 - c) A reprimand would not be appropriate and nor would a short period of suspension given the disciplinary record of Mr. Juneja.
 - d) However, the misconduct of Mr. Juneja is serious, and in some respects repeated, and a suspension is therefore warranted.

³⁴ Guideline, paragraphs 190-191.

³⁵ Guideline, paragraph 189.

45. In arriving at the length of the suspension the Committee accepts the “step-up” principle and that “conduct deserving of sanction are cumulative and future offences will attract progressively more severe penalties.”³⁶

Costs

46. Section 72(2)(c) of the *Act* provides this Committee with the authority to order costs:

72(2) In addition to an order under subsection (1), the Hearing Committee may make one or more of the following orders:

...

an order requiring the payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order.

47. The LSA sought costs of \$133,670.92 which comprised the following:

Investigation Costs	\$ 19,234.85
Law Society Counsel	\$ 72,555.00
Disbursements (Medical Experts)	\$ 25,602.79
Court Reporter and Transcripts	\$ 11,503.28
Witness expenses	\$ 50.00
Hearing Expenses	<u>\$ 4,725.00</u>
	\$133,670.92

48. Mr. Juneja argues that costs should not act as an impediment to Mr. Juneja raising legitimate defences and he relies upon the *Alsaadi* case where the court stated: “A reasonable opportunity to defend oneself can become hollow if the spectre of paying exorbitant costs creates a disincentive to do so.”³⁷ Mr. Juneja further relies upon the *Jinnah* case in support of the proposition that claimed costs in this matter are so large that they effectively become the primary sanction.
49. The LSA counsel rate is \$125.00 per hour and the investigation rate is \$100.00 per hour. This was a six-day hearing with 19 witnesses, and a further three days for the sanctioning phase. The Committee does not find these rates to be excessive and nor does the time claimed for counsel fees appear unwarranted in view of the hearing length.
50. As noted, Mr. Juneja relies upon the approach taken by the Court of Appeal in the *Jinnah* case as the basis for determining costs³⁸. In *Jinnah*, the following principles are set out at paragraphs 124 to 127:

³⁶ *Law Society of Alberta v. Estrin*, 1992 ABCA 265.

³⁷ *Alsaadi*, paragraph 375.

³⁸ *Jinnah*, paragraph 141.

- a) awards of costs are not supposed to be a sanction; and
 - b) generally the profession as a whole and not the individual member being sanctioned should pay the costs of disciplinary proceedings.
51. At paragraphs 128 to 144 of *Jinnah*, the Court of Appeal set out four circumstances where substantial cost awards are indeed appropriate:
- a) when the member has engaged in serious misconduct;
 - b) when the member is a serial offender;
 - c) when the member fails to cooperate with the regulator's investigation; and
 - d) when the member is guilty of hearing misconduct.
52. The *Jinnah* case was considered by an LSA appeal panel in the matter of the *Law Society of Alberta v Beaver*³⁹ where that appeal panel surmised that the *Jinnah* approach to costs (subject to the *Health Professions Act*), may not be applicable to cost matters governed under the *Act*. Nonetheless, following the *Beaver* appeal panel's approach, the Committee has determined even if the *Jinnah* approach is to be followed, Mr. Juneja's conduct clearly falls within the examples provided by the Court of Appeal for substantial costs. Thus, a substantial costs awards against Mr. Juneja is appropriate in this matter because he has been found to be guilty of very serious misconduct.
53. The Committee finds the costs appropriate and reasonable and orders that they be paid in full.

Decision

54. Mr. Juneja shall be suspended for a period of 15 months, which suspension will take effect 14 days from the date that this decision is rendered. In addition, Mr. Juneja will pay costs of \$133,670.92 by May 1, 2027.

Concluding Matters

55. 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. Juneja will be redacted

³⁹ *Law Society of Alberta v Beaver*, 2023 ABLS 4.

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

56. The Committee further directs that a Notice to Profession be issued with respect to the suspension of Mr. Juneja.
57. No notice to the Attorney General is required in these circumstances.

Dated January 18, 2024.

Bud Melnyk, K.C.

Lou Cusano, K.C.

Edith Kloberdanz