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 JONATHAN DENIS, KC
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Corinne Petersen, KC – Chair and Former Bencher
Ronald Sorokin, KC – Bencher
Ike Zacharopoulos – Adjudicator

Appearances
Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Alain Hepner, KC – Counsel for Jonathan Denis, KC

Hearing Dates
February 6-7, 2024
April 18, 2024

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

OVERVIEW

1. Jonathan Denis has a litigation and government relations law practice in Calgary, Alberta. He practiced law from 2001 until he was elected as an MLA in 2008. In addition to other portfolios during his tenure as an MLA, he was appointed Solicitor General in 2011 and Justice Minister from 2012 to 2015. In 2015 he resumed his law practice.

2. The following citations were directed to hearing by a Conduct Committee Panel on March 14, 2023:

    1) It is alleged that Jonathan Denis, K.C., acted for RM while in a conflict of interest and that such conduct is deserving of sanction (Citation 1).

    2) It is alleged that Jonathan Denis, K.C. threatened to make a complaint to a regulatory authority in an attempt to gain a benefit for his client, DL, and such conduct is deserving of sanction (Citation 2).

3. Mr. Denis was contacted by the complainant, Mr. L, in August 2020 about a motor vehicle accident (Accident) his daughter SL and her friend RM had been involved in. Mr.

L was the owner of the vehicle SL was driving. The parties met with Mr. Denis to discuss the Accident and a contingency fee agreement was signed by SL. A few days later a contingency fee agreement was signed on behalf RM, a minor, by BM her litigation representative. In late October 2020, Mr. Denis ceased acting for SL. He continued to act for RM and in April 2021, he filed a personal injury claim for injuries sustained in the Accident on behalf of RM, naming, among others, SL and Mr. L as defendants. This conduct is the subject of the first of two citations against him.

4. In November 2021, Mr. Denis was retained by DL to prepare and send a cease and desist letter (CD Letter) to DN following the end of their extra-marital affair. The CD Letter was sent to DN on November 13, 2021 alleging she was engaging in inappropriate behaviour and demanding that she cease the behaviour failing which a restraining order would be sought. The CD Letter also notes DN's employment as a peace officer and states "[s]uch conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue." This statement and a further email reiteration of it are the conduct under consideration in the second citation.

5. On February 6 and 7, 2024 the Hearing Committee (Committee) convened a virtual hearing (Hearing) into the conduct of Mr. Denis based on the two citations.

6. Following the Hearing, an application in writing was made by counsel for Mr. Denis to re-open the Hearing so that he could adduce further evidence. The Committee reviewed the submissions of Mr. Denis and the LSA and denied the motion for reasons set out further below.

7. Closing submissions on the merits were heard on April 18, 2024.

8. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Mr. Denis for the reasons set out below, the Committee finds Mr. Denis guilty of conduct deserving of sanction on both Citations 1 and 2, pursuant to section 71 of the *Legal Profession Act* (*Act*).

9. The Committee will reconvene at a later date to hear submissions on and determine the appropriate sanction. Any determination of costs will be made as part of the sanction hearing.

PRELIMINARY MATTERS

10. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Denis's conduct proceeded.

EVIDENCE

11. The parties did not provide an agreed statement of facts.

12. Five witnesses testified at the Hearing including Mr. Denis.

Evidence on Citation 1

13. Mr. L, the complainant, was called as a witness on behalf of the LSA. He testified that his daughter SL could not testify as she was undergoing cancer treatment and was not physically or emotionally able to attend the Hearing.

14. Mr. Denis testified on his own behalf.

15. The facts are generally not disputed, other than the following:

    1) Mr. Denis disputes that Mr. L was his client;

    2) Mr. Denis disputes receiving any statement or photographs from Mr. L or SL;

    3) Mr. Denis disputes that he had sufficient liability information to assess the claim prior to receiving the RCMP report; and

    4) Mr. Denis disputes that he had any confidential information at the time he ceased acting for SL.

16. Mr. L is a paramedic and the owner and CEO of a paramedic supply company.

17. On August 12, 2020, SL was involved in the Accident. She was driving a Jeep Wrangler (Jeep) owned by Mr. L and her friend, RM, was her passenger. Following the Accident she called Mr. L, who attended the scene. Upon arrival he found his daughter sitting on a curb crying and noted the RCMP were still there. He assessed his daughter and the Jeep, and took some photographs of the Accident scene. He spoke to the RCMP constable at the scene who told him that RM had been transported by ambulance to the hospital.

18. Mr. L helped his daughter prepare a statement dated August 13, 2020 (Statement) which details the circumstances of the Accident and includes scene photographs. The Statement reads:

> Statement: [SL]
> DOB: June 6, 2002
> Driver: Jeep Wrangler Unlimited 2015
> Other Vehicle: CP or CN Railway Truck with Rail wheels mounted in front.
>
> On the night of August 12, 2020, I was driving my Jeep and heading Eastbound on Griffin Road from HW22, through the light at the intersection on 5th Ave in

> Cochrane. I was with my best friend on the way from the river to McDonalds for something to eat, before it closed at midnight. It was about 11:30 pm.
>
> I had my left signal on and was encroaching the intersection to turn left (northbound to McDonald's). I recognized an oncoming large transport truck (CP or CN Railroad
> Maintenance Heavy tandem type of truck) with his right-hand signal on, proceeding to turn right. I proceeded through the intersection in a safe manner to turn left, as he was turning right.
>
> I have been driving in Cochrane for 2 years now, and I am aware and very familiar with this intersection and how it is a right turn lane, which gives vehicles the ability to turn left heading North, with a free flow lane.
>
> I saw he had his RIGHT TURN signal on to turn right, which means he his free flow lane and I had mine, both heading north. To my knowledge, and at the last second, he turned it off and was going straight ahead and hit me. I also recalled that he did not seem to slow down or attempt to avoid the collision. There was no time for me to avoid this and he hit me at the beginning of the intersection where I was turning left and pushed me through to the other side of the intersection. The railroad wheels attached to the front of the truck rammed into my Jeep creating passenger compartment intrusion and a large amount of damage into the passenger side compartment area. I do not understand why he would change mind and make a lane change in an intersection.
>
> I also noticed that there are cameras on the traffic light assembly as per the photos that I have attached. If video information can be used to reconstruct this collision, I would like to see it.
>
> I also have a question about the safety of the truck that hit my vehicle. The amount of weight and the way that the railroad wheels are aligned, is a definite safety concern.
>
> Are these vehicles allowed to travel like this?

19. Mr. L testified that his daughter and RM felt they were not at fault. He was also concerned, based on his experience as a paramedic, that the speed of the CP Rail vehicle (Truck) which hit them and the size of the wheels mounted on the Truck were factors in the Accident. He wanted legal advice and contacted Mr. Denis by email for that purpose.

20. Both Mr. Denis and Mr. L confirmed that all communications between them prior to an in-person meeting four days later were by email and that all email communications were entered as exhibits at the Hearing.

21. Mr. L first emailed Mr. Denis on August 14, 2020 at 12:42 pm. The body of the email simply states, "Hi John, please let me know you received this in good order." The email bounced back and he forwarded it to a revised email address for Mr. Denis at 12:49 pm. Mr. L testified that he attached the Statement to this email.

22. Mr. Denis denied receiving the Statement with the email. Nonetheless, he responded to the email six minutes later stating in part that "… [there] may be a liability issue as she was turning left and there is an onus against her. This can be rebutted with the evidence that the truck was signalling right …."

23. The email exchange continued that day with Mr. L providing the following information:

    1) that he had attended the Accident scene;

    2) what he observed at the scene;

    3) his conversation with the attending constable;

    4) his concerns about the Truck;

    5) information regarding whether statements were taken;

    6) concerns that SL may have lost consciousness; and

    7) that he thought RM had the same recollection of the circumstances of the Accident.

24. The August 14, 2020 emails exhibited at the Hearing were printed as one email chain. Mr. Denis testified he checked his electronic folder during a break and did not see the Statement. Likewise, Mr. L checked his email during the Hearing and testified that his version of the email has a paper clip on it indicating an attachment. Neither version was verified at the Hearing.

25. At 3:03pm the same day, Mr. Denis's assistant emailed Mr. L advising that Mr. Denis said they could also act for RM, but would have to refer her to other counsel if liability is contested as there may be a conflict.

26. Mr. L, SL and RM met with Mr. Denis and his assistant in his office on August 18, 2020 for 30 to 45 minutes. According to Mr. L they were there about 45 minutes. Mr. L testified that they discussed the Accident scene, the circumstances of the Accident, that both SL and RM were one hundred percent sure the right signal of the Truck was on and that they felt they were not at fault. Mr. L testified that Mr. Denis showed interest in the case and said that they had a chance given the extent of the damage, the intersection, the possible speed of the Truck and the fact that the right signal was on. They also discussed SL and RM's current state of health. Mr. L recalls showing his identification and writing on a piece of paper.

27. Mr. Denis's evidence was less detailed about what was discussed at the meeting, and he admitted that he did not recall all of the details. He testified that they discussed the Accident at the meeting and that the accounts of the Accident were virtually identical, although no specifics were provided. He stated that no documents were exchanged and that he specifically recalls stating that they would need to wait for the RCMP report before making any determination. He explained to them the issues related to joint retainers. This included telling them they were not uncommon but that he needed their consent. They talked about how confidential information could not be kept confidential between them and that if a conflict arose, he would have to stop acting for one or both of them. He also recalled discussing this with his assistant who sent an email confirming this. SL signed a contingency fee agreement at the meeting. Mr. Denis determined at the meeting that RM was a minor and arranged for her mother to come by a few days later to sign a contingency fee agreement on her behalf. He recalls discussing the same aspects of a joint retainer with her as well. Mr. L did not sign a retainer agreement and Mr. Denis did not consider Mr. L a client.

28. On August 20, 2020, Mr. L forwarded email correspondence he received from his insurer to Mr. Denis for review. He testified that he wanted some advice on whether to sign the document provided. Mr. Denis responded "[t]his is an industry standard release form. If you are happy with the amount I have no issue with you signing it." Mr. Denis was copied on a further email exchange between Mr. L and his insurer on August 27, 2020 regarding his vehicle and its contents. He testified that he wanted the contents from his vehicle and did not want to get them without the okay from his lawyer and his insurer. The reply from Mr. Denis was: "If you have any further issues let me know and I can send them a letter." Mr. Denis testified that he responded to Mr. L as a courtesy and again that he did not consider him a client.

29. On September 24 and October 13, 2020, Mr. L followed up with Mr. Denis requesting updates. Mr. Denis' assistant responded both times advising they were still waiting for the RCMP report.

30. Mr. Denis testified that he received the RCMP report on October 15, 2021. From the report he concluded that there were serious liability issues with SL's claim and given his obligation not to pursue meritless claims he elected to cease representing SL. He denied that the reason he opted to cease acting for SL and continued to act for RM was because RM's case did not have a liability issue and would be the better case to take on.

31. On October 27, 2020 Mr. Denis sent a letter, erroneously dated August 18, 2020, to SL and advised that he would no longer represent her because she would likely be found liable. He noted the RCMP report indicated that she attempted to turn left on a green light and the oncoming truck could not stop in time. He also noted that a key factor in coming to this conclusion was the lack of any independent witnesses. The letter is silent regarding his intent to continue to represent RM.

32. A further follow up request was emailed to Mr. Denis on November 2, 2020 to which he responded “I wrote your daughter a couple of weeks ago. As she’s 18 I will need her consent to talk to you…”.

33. Mr. L testified that his next involvement was when he and SL were served with a Statement of Claim filed by RM by her litigation representative BM against them. He was shocked to be sued by his own lawyer and RM, who he had brought to Mr. Denis.

34. The testimony of Mr. Denis and the exhibits entered set out the following chronology related to his continued representation of RM and his response to opposing counsel’s claim that he had a conflict:

- April 2021 – Counsel for the Truck’s insurer advised that the insurer was denying that RM was in the vehicle at the time of the Accident. Mr. Denis determined that a claim would have to be filed and he testified that he considered at that time whether there he would be in a conflict if he sued SL and Mr. L. His firm had a process for assessing conflicts which involved an appointed conflicts officer who would make independent decisions on conflicts matters. He discussed this matter with the firm’s conflicts officer and a LSA practice advisor and determined he could continue to act for RM. He testified that if anyone had told him there was a conflict he would have immediately got off the file.

- April 12, 2021 – Mr. Denis made a note to file of his discussion with his firm’s conflicts officer. The note states in part:

  > Discussed that there is no issue suing [Mr. L] as he was never our client. Relating to [SL] discussed leading case on conflicts (MacDonald Estate) and the two factors. Reviewed file and we were not in possession of any confidential information that could that could [sic] prejudice [SL] (just a police report that any party can obtain). Reviewed *Code of Conduct* rules on acting against former clients. There is a rule on acting against former clients in the same manner. Agreed that I would call the practice advisor but both of us didn’t feel that there was a conflict as there is no disbenefit to [SL] as we didn’t have any confidential information in our possession that could prejudice her.

- April 15, 2021 – Mr. Denis made a note to file of his call with a practice advisor which states in part:

  > Confirmed no issue at all relating to [Mr. L] as while he met with us there was no representation of him as he was not involved in the Accident or injured and no contingency was executed for him.

Relating to [SL], discussed rules on acting against former clients and didn't feel this was an issue as we didn't have any confidential information and took no steps to represent her.

- April 21, 2021 – Mr. Denis' assistant emailed BM advising that Mr. Denis wanted to file a claim given the position of the Truck's insurer but would have to name SL and Mr. L. The claim was attached for review and approval for filing.

- April 29, 2021 – Mr. Denis' assistant sent a follow up email to BM asking for instructions to file the Statement of Claim. There was no email response before the claim was filed.

- April 30, 2021 – A Statement of Claim was filed by Mr. Denis on behalf of RM against Mr. L and SL among others.

- July 28 to July 29, 2021 – Several emails were exchanged between Mr. Denis' assistant, BM and Mr. Denis regarding BM's questions about naming SL and Mr. L. In one email, BM wrote "[i]f we are unable to sue the driver of the truck that hit them without suing [SL] and [Mr. L] then we do not want to proceed with this claim.'

- August 3, 2021 - Mr. Denis testified that he made a note to file this date of a call with BM during which she stated she felt pressured by Mr. L to drop the case.

- September 14, 2021 – Defence counsel for Mr. L and SL raised a conflict of interest in an email to Mr. Denis. He responded the same date stating that he had discussed the matter with his firm's conflicts officer and concluded there was no conflict as he had not received any confidential information that would prejudice the [Mr. L and SL]. He suggested they contact a practice advisor. This email does not mention that he had contacted a practice advisor in April.

- September 16, 2021 – Mr. Denis testified that he again called a practice advisor and that he was left with the same impression.

- October 4, 2021 – Defence counsel emailed Mr. Denis and restated his position that there was a conflict, referencing section 3.4-6 of the LSA Code of Conduct (Code), advice from Mr. L that there had been a 1.5 hour meeting between Mr. Denis and [Mr. L and SL] during which an extensive statement was taken from SL. Defence counsel advised that he had spoken to a practice advisor who confirmed his assessment. He suggested Mr. Denis reach out to the same practice advisor directly.

- October 5, 2021 – Mr. Denis emailed defence counsel advising of steps taken to determine that there was no conflict and reasserted his position that there was no conflict of interest.

- October 14, 2021 – Defence counsel suggested a conference call with a practice advisor to resolve the issue given their impasse.

- October 14, 2021 – Mr. Denis emailed defence counsel, reinforced his no conflict position and suggested he would succeed in an application to determine the matter.

- October 20, 2021 – In a response email defence counsel again notes that Mr. Denis met with Mr. L and SL, entered a contingency fee agreement with her, questioned her on the facts of her case and then commenced an action against her. He again suggested a meeting with a practice advisor. Mr. Denis responded again reaffirming his position that there was no "unresolvable" conflict.

- October 21, 2021 – Mr. Denis emailed BM, RM's litigation representative, advising that defence counsel had raised a conflict. He wrote that while he disagreed with defence counsel he did not want to delay the litigation and recommended that she seek new counsel. A note to file the same day of a telephone discussion with BM confirms her instructions to send the file out.

- December 16, 2021 – In a letter to the LSA, Mr. Denis made the following statements:

    - Mr. L was never a client and that and "[w]e also did not communicate with him or represent him about any property damage claim he would have had.";

    - SL was "initially and briefly our client;"

    - there may be a privilege issue and with respect to SL his opinion that "I do not believe her confidential information should be disclosed to [Mr. L];"

    - "I later reviewed the matter in further detail and, after careful consideration, believed [SL] to be at fault in the collision (at least partially if not totally)";

    - "we only conducted an initial interview of all parties (who had a virtually identical account of the Traffic Accident) and ordered for a police report";

    - that he had "only acted for [SL] for a matter of days"; and

- he concluded there was no confidential information received because the version of the Accident provided by SL and RM was the same and the only document he had, an RCMP report, was publicly available.

35. Mr. Denis testified that with the benefit of hindsight he acknowledges that there was a conflict in this particular case. He understood, erroneously, that he could sue a former client in the same matter if he did not have confidential information that could prejudice the other party. He testified that it was an honest but mistaken belief.

Evidence on Citation 2

36. The LSA called DN, the complainant, as their only witness. DL and his wife EL , were called as witnesses for Mr. Denis. Mr. Denis testified on his own behalf.

37. The only communications between Mr. Denis and DN were by email on November 13 and December 9, 2021. These communications are central to the Citation.

38. The CD Letter was sent to DN from Mr. Denis by email on November 13, 2021. The letter reads in part:

> We understand from our client that you have been engaging in inappropriate behavior including without limitations as follows:
> - Threatening to report false allegations of sexual assault and/or bodily harm on the part of our client;
> - Continually contacting [DL]'s wife, children, close friends, and immediate family;
> - Posting defamatory insults across social media platforms;
> - Engaging in harassing phone calls and messages to our client.
>
> **Let us be clear: our client does not desire any type of contact in the broadest sense.** We require you to cease and desist any and all attempts to contact him and any and all related parties as well as making false and defamatory claims on social media. If this demand is not heeded forthwith and immediately, our client is intent on pursuing a restraining order as against you.
>
> We are also aware that you are employed as a Peace Officer. Such conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue.

39. DN responded by email to Mr. Denis the same day as follows:

> I will defiantly [sic] be getting a lawyer. I never once said anything about sexual assault. He has an std and never told me about it.
>
> He placed a false police report. I have all the text messages from our relationship. I told the cops yesterday that I will have no contact with them.

40. Mr. Denis emailed DN on December 9, 2021 (Email), writing:

> It has come to my attention that photographs that are only in your possession including my clients children has surfaced on tinder and elsewhere without his consent. The children are minors and our client forbids dissemination of these photos to any third party and requires immediate deletion of same as they involve minors to which a reasonable expectation of privacy attaches.
>
> Please be advised that if immediate compliance to this Is not effected we reserve the right to take further steps at law including without limitation reporting this matter to your employer as a violation of your code of conduct as a peace officer.
>
> **Bluntly. This will go away and you won't get any more letters from me if you leave my client alone.**
>
> This is a serious matter and we recommend you obtain independent legal counsel as we represent the putative plaintiff in this matter and cannot represent your interests.

41. She responded as follows:

> I don't have a clue what you're talking about. I made those kids my priority while DL and I were in a relationship. I would never post anything about his kids.
>
> As for my work goes I know it's against your code of conduct to be threatening my job.

42. The email exchange continued with Mr. Denis responding:

> At no point did I "threaten your job" but rather simply indicated that we reserve the right to report this matter to your employer should the harassment of my client continue. You have a code of conduct that you are bound to follow by way of your employment.
>
> As indicated, if you simply leave my client alone (directly or indirectly), this matter will go away and you will not hear from me again.

43. DN again responded:

> I haven't contacted your client since November 12. I don't have a clue why you're even emailing me today. I have had zero contact with that family.
>
> Please stop emailing when you're not getting all the facts.

44. The final reply came from Mr. Denis less than an hour and a half later:

> As indicated, if you leave my client alone, directly or indirectly, you will not hear from me again. Otherwise, we reserve any and all rights at law.

45. The evidence of DN was significantly inconsistent with the evidence of DL and EL. The evidence of each of the witnesses, including Mr. Denis, is set out individually below.

46. Counsel for the LSA has argued that the evidence of DL and EL regarding the specific details of the relationship and the calls and messages are not relevant to the Citation. Counsel for Mr. Denis has argued that their evidence was necessary to provide context.

Evidence of DN

47. DN testified that she was in a relationship with DL from July through November 2021. She began to suspect that DL was not separated as he told her, but still living with and in a relationship with his wife, EL.

48. On November 11, 2021, she looked up EL's Instagram profile, noticed a recent "date night" photo was posted and messaged EL to find out whether they were still in a relationship.

49. According to DN, that message resulted in a barrage of calls and messages from DL in which he denied he knew her. She responded with further messages to EL providing proof of the relationship in the form of photographs and text messages, wanting to make sure EL knew the whole story. At no time did she get a response from EL.

50. On November 12, 2021 she received a call from an RCMP officer who advised that they had received a complaint that she was harassing DL and EL and had called them more than 76 times.

51. DN denied calling DL and EL 76 times and testified that she did not initiate any further contact with them after the call from the RCMP, except for one TikTok post on December 5, 2021.

52. During the course of the affair, DN testified that she was on a mental health leave from her employment as a community peace officer and had been for some time. She had no access to any work-related resources.

53. DN received the CD Letter from Mr. Denis by email on November 13, 2021. She testified that all the allegations in the letter were false other than the allegation that she had messaged EL, and she felt threatened because she was doing all she could to return to her law enforcement career. She responded by email to Mr. Denis the same day denying the allegations.

54. Following receipt of the CD Letter she made no further contact with DL and EL and posted no further messages until December 5, 2021 when she posted text messages and photographs from her time with DL on TikTok. The posts did not include photos of his children.

55. She then received the Email from Mr. Denis on December 9, 2021 and exchanged several email messages with him that day.

56. DN denied ever posting any photographs of DL and EL's children.

57. DN testified that receiving the CD Letter and Email from Mr. Denis caused a setback of her mental health and her progress to get back to work.

58. On cross-examination, she agreed no legal action was taken against her by DL and EL and no request for compensation was made.

59. DN was cross-examined extensively about the extent of her social media contact with DL, EL and their friends, the extent of the social media contact her sister and friends had with DL, EL and their friends. Much of her testimony was unclear, contradictory and at odds with the testimony of the DL and EL. Her evidence on cross-examination included the following:

- DN admitted she sent more than one message to EL but could not say how many. She also admitted that she told her friends that DL was still married and had not been truthful with her.

- DN testified she did not recall a discussion with DL's sister which she had provided in the following statement to a LSA investigator:

> Like, she says, don't post stuff about my brother. These posts need to be taken down. If you don't stop, I'm calling your sergeant. We're going to your work. We're going to get you charged. I'm like, I'm so done. I don't -- I think so.

- She admitted there were several posts but stated they had mostly been taken down before the call.

- She denied asking her friends to post about the affair.

- She admitted that she wanted DL to be tested for an STI because of open mouth sores he had during the course of their relationship. She believed that if she got an STI from him it would be a sexual assault.

- She denied having a Tinder account but after her statement to the LSA was put to her, she clarified that she had one for herself, not DL and only for one day after November 2021.

- She denied telling DL that she was working as a peace officer. She told him she was on leave, told by her doctors that she would never be back in uniform, but she still hoped she could return.

- She admitted she had contact with DL's sister, AB, the day after receiving the CD Letter, but denied that she initiated the contact.

Evidence of Jonathan Denis

60. Mr. Denis testified that he was contacted by AB, his friend and DL's sister, in November 2021. He was told that DL was being harassed by a woman he had an affair with, and that the affair had ended badly. She also told him that police were involved.

61. He met with DL, took his identification, and signed a retainer agreement, although the work was done *pro bono*.

62. The contents of the CD Letter were based on information provided by DL including:

- his belief that she was using her workplace resources to "effect" the harassment;

- DN's claim that he gave her an STD and was accusing him of sexual assault; and

- unwanted online contact with his wife, children and others.

63. Mr. Denis relied solely on the information provided by DL to prepare the letter. He did not see any of the Facebook or Instagram posts. He later requested and was provided a copy of a photograph of the children which DL told him had been posted on Tinder.

64. At the time he sent the CD Letter and Email, he also had in mind the developing tort of civil harassment.

65. The intent of the CD Letter was to stop further communications and stop online harassment and defamatory statements from DN and her friends.

66. Both AB and DL told him that DN was a peace officer. He testified that he was aware that peace officers have codes of conduct from his time as Solicitor General.

67. After November 13, 2021 Mr. Denis did not hear further from DL until December when he received information that photographs of the children were posted online. He testified that he was concerned for the children's safety.

68. He sent the Email on December 9, 2021 due to his concerns about the children. He testified that he included the reservation of his right to report the matter to her employer

because he had been repeatedly advised by DL that he was concerned she was using her workplace resources to “effect” the harassment. He also testified that an employer might be civilly liable for harassment.

69. Mr. Denis testified that the sole purpose of the letter and emails was to get the harassment to stop. Other than that, he could not think of any benefit he was seeking. He thought that it might be criminal harassment but knew the police were involved.

70. Mr. Denis further denied that his intent was to report the conduct as a code offence but rather his intent was to report an improper use of office resources. He admitted on cross-examination that this was not mentioned in the CD Letter.

71. Mr. Denis testified that he was aware that peace officers have a code of conduct. He disagreed that the codes were developed by their employers. His understanding is that the department of the Solicitor General sets the legislation and regulations setting the parameters for the code of conduct. He also testified that complaints go to the director of law enforcement, not the employer. He was not intending to threaten DN’s job, he just wanted the harassment to stop.

72. Mr. Denis was not aware of whether AHS was an authorized employer under the *Peace Officer Act*, SA 2006, c P-3.5.

73. Mr. Denis did not hear further from DL after the December 9, 2021 emails and presumed the harassment had stopped.

Evidence of DL

74. DL is married and has children.

75. DL had a four-month affair with DN which ended around November 11, 2021 when his wife found out. EL had been receiving social media messages from multiple unknown accounts for two weeks about the affair. His wife then received a direct message from DN about the affair. Initially, he denied the affair, but admitted knowing DN after she messaged EL directly.

76. DL blocked DN from his personal and business social media accounts.

77. The majority of the social media messages were directed to his wife until DN was blocked from those as well.

78. After DN’s messages were blocked by DL and EL, they started receiving messages from DN’s sister. Their friends told him they also received messages from DN about the affair that included photographs of his children and details of their relationship. He never personally saw photographs of his children online.

79. The first step they took was to contact the RCMP because they wanted the messages to stop.

80. DL testified that he then started receiving text messages and phone calls from DN which he did not answer. He blocked her phone calls, but still received voicemail messages. He testified that there were many calls and about three voicemails. In the last voicemail, DN threatened a sexual assault and bodily harm action because of a cold sore he had while in the relationship. She also said that she would make his life a living hell. His recollection was that the calls and voicemail messages came after he had contacted the RCMP.

81. DL contacted Mr. Denis after DN threatened him with legal action for sexual assault and bodily harm. He told Mr. Denis about the messages and calls from DN and her sister and, after they were blocked, messages from random accounts. He told Mr. Denis that he wanted these to stop.

82. DL did not see the CD Letter before it was sent.

83. The messages from random accounts continued and they contacted Mr. Denis again. He understood more letters were sent by Mr. Denis.

84. The messages continued for months. DL thought it was about eight months later that a random person told his wife he had a Tinder account. He was shown a screenshot of the profile which had a photograph from his Instagram account.

85. DL testified that he knew DN was a peace officer working for AHS in the security detail. He thought she was working in that capacity during the time of their affair.

86. DL never instructed Mr. Denis to commence a legal action against DN.

Evidence of EL

87. EL has been married to DL since 2007. She has a jewelry business she runs from home. She has both personal and business Facebook and Instagram accounts.

88. EL testified that her involvement with DN started in November, 2021. EL had posted a photograph of DL and herself on her Instagram account. That evening, DN messaged her stating that DL was her boyfriend and she was sick and tired of hiding their relationship. Over the next six hours she received a minimum of 70 messages saying her marriage was over, that she was worthless and that she needed to leave her marriage. These messages were all on social media and from DN and her sister. They included specific details about the affair.

89. The next morning, she contacted the police. EL testified they were unable to do anything but tell DN to stop.

90. After the messages were blocked on her personal accounts, they came to her business accounts which could be seen by everyone. She then started getting messages from fake accounts. Friends have told her they received messages about the affair with photographs of DL and their children detailing the relationship. One was a screenshot of a Tinder account asking if this was her husband. The messages continued until the following July and then stopped until she received another message a couple of months before the Hearing.

Application to Re-Open the Hearing

91. Counsel for Mr. Denis applied to re-open the Hearing to allow fresh evidence to become part of the record in regard to Citation 2, specifically two emails from DN to DL and EL respectively. The emails are both dated February 11, 2024. They post-date the Hearing on February 6 and 7, 2024 and pre-date written and oral submissions and the decision of this Committee.

92. The stated purpose for the application and the proposed fresh evidence was to attack the credibility of DN, provide fuller context to the facts giving rise to the Citation and to bolster the rationale for Mr. Denis's retention and his intent in sending the CD Letter and Email.

93. The LSA opposed the application on the basis that DN denies sending the emails; that they are irrelevant to the issue to be determined and to any material credibility issue; that the emails are prejudicial to DN; and that they cannot be used to justify the CD Letter and Email retrospectively.

94. Counsel for Mr. Denis cited a number of criminal and regulatory cases which suggest the following factors[1] should be considered in determining whether to re-open a hearing to adduce fresh evidence:

    1) whether the evidence is relevant and material to an issue at trial;

    2) the potential prejudice to the opposing party;

    3) the effect of permitting re-opening on the orderly and expeditious conduct of the trial;

    4) the stage of the hearing when the application is made;

[1] *R* v. *Hayward,* (1993), 86 CCC (3d) 193 (ONCA), cited in *Law Society of Upper Canada* v. *Bharadwaj*, 2011 ONLSHP 4 at paragraph 109; *Law Society of Ontario* v. *Ciarallo,* 2021 ONLSTH 143 at paragraph 49*; R* v. *Karim,* 2010 ABCA 4011; *R* v. *Ibrahim,* 2010 ABCA 375 at paragraphs 7-8 & 10; *Newcombe (Re),* 2022 LSBC 14 at paragraphs 45-46.

5) the probative value of the proposed evidence;

6) any explanation offered for the failure to call the evidence at an earlier stage;

7) whether the failure to call the evidence earlier could be viewed as a tactical decision; and

8) whether the refusal to permit re-opening risks any miscarriage of justice.

95. Counsel for the LSA suggests a three-part test for admitting fresh evidence before a decision has been rendered as follows[2]:

1) Would the evidence, if presented at the hearing, likely have changed the result?

2) Could the evidence have been obtained before the hearing by the exercise of reasonable diligence?

3) Would re-opening the evidentiary record be in the public interest?

96. According to the cases, the underlying question is whether it is in the public interest to exercise a discretion to re-open a hearing to allow new evidence. Public interest weighs in favour of allowing relevant, material and probative evidence which may impact the outcome of the hearing and against not calling the evidence during the hearing without good justification, delaying expeditious conduct of the hearing, and allowing evidence which is prejudicial to the opposing party.

97. The Committee first considered the specific evidence sought to be introduced by applying the factors suggested by counsel for Mr. Denis, then again in light of the factors suggested by counsel for the LSA and arrived at the same conclusion that the Hearing should not be re-opened to allow the new evidence.

98. Citation 2 arose as a result of the CD Letter and Email, both of which predated the new evidence by more than two years. As such this evidence cannot be relevant or material to whether Mr. Denis's actions in sending them amounted to professional misconduct at that time and would not have any bearing on the outcome of the Hearing. As the evidence did not exist and could not have been obtained prior to the Hearing, likewise it cannot be applied retrospectively to inform Mr. Denis's considerations, intentions and actions at the time he penned and sent the CD Letter and Email and whether, as required by section 3.2-11 of the Code, he threatened to make a complaint to a regulatory authority to gain a benefit for his client, DL.

[2] *671122 Ontario Ltd.* v. *Sagaz Industries Canada Inc.*, 2001 SCC 59 at paragraphs 20, 65; *Tsleil-Waututh Nation* v. *Canada (Attorney General),* 2018 FCA 104 at paragraph 21*; LSA* v. *McLaughlin,* 2014 ABLS 44.

99. The Committee had, prior to the application to re-open the Hearing, serious concerns about DN's credibility and the introduction of this evidence would not impact this assessment or change the Committee's understanding of the context within which Mr. Denis sent the CD Letter and Email. In short, the Committee viewed DN's behaviour to be harassment, and even possibly criminal harassment, however this was not the issue to be determined. That her behaviour may again have been reported to the RCMP as suggested, but not proven is not relevant to the issue of whether Mr. Denis threatened regulatory proceedings in violation of section 3.2-11 of the Code more than two years earlier. Further, this evidence is highly prejudicial to DN, and this outweighs any remotely possible probative value it might have.

100. Finally, the evidence was contested and without recalling DN, DL, EL and possibly other witnesses, the evidence could not be tested and would be of little value in any event.

101. For these reasons, the Committee finds that it would not be in the public interest to re-open the Hearing to allow two emails dated February 11, 2024 to become part of the record and the application is denied.

ARGUMENT AND ANALYSIS

Submissions on Citation 1

102. Counsel for the LSA argued that Mr. Denis breached sections 3.4-1 and 3.4-6 of the Code based on the following:

1) Mr. Denis's loyalty and duty to SL was materially and adversely affected by his own interest in pursuing RM's claim which did not face the same liability issues as SL's claim and would be more profitable to him;

2) Mr. L was also a former client notwithstanding no formal retainer agreement;

3) Mr. Denis acted against his former clients, SL and Mr. L, in the same matter;

4) substantial confidential information had been obtained from SL including her account of the Accident, her health, personal photographs of the Accident scene and had an opportunity to assess the strength of her assertion that the Truck involved in the Accident had its right signal activated; and

5) that the accounts of the Accident were virtually identical or that the information is publicly available is irrelevant;

103. The LSA further raises the possibility that Mr. Denis breached section 3.4-5 of the Code and argues that there is insufficient evidence that he fully discharged the duties required

before accepting the joint retainer. In support of this argument counsel relies on the fact that Mr. Denis ceased to act for SL as opposed to RM as he initially indicated he would do in the event a liability issue arose.

104. The LSA argued that the conduct amounts to sanctionable conduct based on the obvious conflict, the shock and dismay of Mr. L and SL upon being sued and BM's expressed reluctance to continue with the lawsuit.

105. Counsel for Mr. Denis argued that while, in hindsight, Mr. Denis acknowledges that there was a technical breach of section 3.4-6 the conduct does not rise to the level of sanctionable conduct.

106. His counsel suggested that Mr. Denis's breach was not conduct deserving of sanction, based on a number of factors, including:

1) his conduct was based on a sincerely held misunderstanding of the Code;

2) he had made every reasonable effort to comply with his professional obligations by seeking input from his firm's conflicts officer and a practice advisor when he first contemplated a potential conflict;

3) his actions were all taken in good faith while balancing his ongoing duty of loyalty to RM;

4) he was not acting out of self-interest when he ceased to act but a duty not to pursue a meritless claim and that he could not have known the value of the claims at that time;

5) he acted quickly to resolve the issue once defence counsel raised the conflict by ceasing to act for RM;

6) fully complying with the complaint investigation; and

7) no harm or consequences flowed to his former client.

107. Counsel relies on the following in support of his argument:

1) Mr. L was never a client;

2) his representation of SL was of short duration and little substance;

3) no confidential or prejudicial information was obtained before or during the short initial meeting with Mr. L, SL and RM and what he was told by SL and RM was virtually identical;

4) no further information was received until the RCMP report arrived which is a publicly available document;

5) the RCMP report was determinative of the liability issue and he felt obligated to cease acting for SL;

6) he considered whether there was a conflict before filing the Statement of Claim, did his due diligence by speaking to his firm's conflicts officer and a practice advisor; and

7) he got off the file as soon as defence counsel for Mr. L and SL raised the issue.

Analysis and Decision on Citation 1

108. The issue to be determined is whether the Mr. Denis acted for RM while in a conflict of interest and if so whether that conduct warrants sanction.

109. While there is no dispute that Mr. Denis acted for both SL and RM, there is a dispute as to whether he also acted for Mr. L.

110. Mr. Denis testified that he never considered Mr. L a client and that other than taking his identification they did not enter into a retainer agreement, no services were provided on his behalf other that a couple of courtesy replies to emails, and no fees were charged. His counsel argued that this was not sufficient to give rise to a lawyer client relationship.

111. Mr. L, on the other hand, considered that Mr. Denis was his lawyer.

112. The Committee has considered the following evidence:

1) the initial contact with Mr. Denis was made by Mr. L;

2) Mr. L met with Mr. Denis along with his daughter and RM;

3) Mr. L had attended the Accident scene soon after the collision while the RCMP were still there and participated in the discussion about the Accident at the initial meeting;

4) all other communications relating to SL's claim both before and after the meeting were between Mr. L and Mr. Denis until he ceased acting in his letter addressed and sent to SL on October 27, 2020; and

5) Mr. Denis provided some limited advice regarding Mr. L's property damage claim and the proposed property damage release in response to Mr. L's request.

113. The Committee finds that the evidence supports the existence of a lawyer-client relationship. This factor, while considered by the Committee, was not determinative of the finding that Citation 1 has been proven.

The Conflict of Interest Rules

114. A lawyer's duty to avoid conflicts of interest is a cornerstone of professional conduct, reflective of the public interest and essential for the maintenance of public confidence in lawyers.

115. The overarching duty and purpose of the conflict rules are set out in section 3.4-1 and Commentary 1 of the Code:

> 3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.
>
> Commentary
>
> [1] A conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. A substantial risk is one that is significant and, while not certain or probable, is more than a mere possibility. A client's interests may be prejudiced unless the lawyer's advice, judgment and action on the client's behalf are free from conflicts of interest.

116. The allegation that Mr. Denis acted for RM while in a conflict of interest specifically invokes section 3.4-6 of the Code which states:

> 3.4-6 Unless the former client consents, a lawyer must not act against a former client:
>
> (a) in the same matter,
>
> (b) in any related matter, or
>
> (c) except as provided by Rule 3.4-7, in any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

Commentary

[1] This rule protects clients from the misuse of confidential information and prohibits a lawyer from attacking the legal work done during the retainer, or from undermining the client's position on a matter that was central to the retainer. It is not improper for a lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that client. A new matter is wholly unrelated if no confidential information from the prior retainer is relevant to the new matter and the new matter will not undermine the work done by the lawyer for the client in the prior retainer.

117. Section 3.4-5 of the Code sets out the requirements for taking on a joint retainer and it states:

> 3.4-5 Before a lawyer acts for more than one client in the same matter, the lawyer must:
> (a) obtain the consent of the clients following disclosure of the advantages and disadvantages of a joint retainer;
> (b) ensure the joint retainer is in the best interests of each client;
> (c) advise each client that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
> (d) advise each client that, if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

118. Section 3.4-6 is clear that in no circumstances can a lawyer act against a former client in the same matter or a related matter. This complete prohibition reflects the ongoing duty of loyalty owed to former client and a presumption that the lawyer, having acted for that client has confidential information. The prohibition, in the context of this section, has recently been referred to as the "bright line rule" in *Habina* v. *Saretsky,* 2023 ABKB 24 (CanLII). The court comments that section 3.4-6 (a) and (b) encapsulates the "bright line rule" that lawyers cannot act "in situations of potential divided loyalties" as follows:

> [13] A lawyer's relationship with his or her client is one of the utmost trust. Consequently, a lawyer cannot act where two retainers give rise to a conflict between their obligations of confidentiality and loyalty to the respective clients. These obligations cannot be compromised.
>
> [14] In Canada, the Supreme Court has laid down a "bright line" in situations of potential divided loyalties. A lawyer cannot concurrently represent clients adverse in interest without obtaining their consent – regardless of whether the matters are related: *R v Neil*, 2002 SCC 70 at para 29. This rule, however, applies only in cases of immediate and direct conflict between the clients' interests: *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39 at para 32.
>
> …

[17] Concerns around divided loyalties arise where there is a risk that the lawyer is tempted to prefer other interests over those of his client, such that it will be "systematically unclear" whether the lawyer performed his or her fiduciary obligations fully in each client's unqualified best interests. If there is a temptation to prefer one client's interests, or to seek a compromise between them, a conflict exists: *McKercher* at paras 25-26.

[18] **Moreover, a lawyer or firm cannot obviate its duty of loyalty to a client by ceasing to act. The duty of loyalty does not allow lawyers to circumvent their obligation not to act against a present or former client by terminating a retainer: *McKercher* at para 55.**

[19] Concerns around the misuse of confidential information against the client from whom it was obtained within a solicitor-client are addressed through a two-part test, enunciated in *MacDonald Estate* at 1260, wherein the court asks:

(1) did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand?

(2) is there a risk that it will be used to the prejudice of the client?

…

[23] *In McKercher at para 61, the Supreme Court held that courts have the inherent authority to remove lawyers from litigation where disqualification is required to:* "(1) avoid the risk of improper use of confidential information; (2) to avoid the risk of impaired representation; **and /or (3) to maintain the repute of the administration of justice.**

[24] The Court went on, at paras 62, to spell out where the need to remove a lawyer will materialize:

> [w]here there is a need to prevent misuse of confidential information, as set out in [*MacDonald Estate*], disqualification is generally the only appropriate remedy, subject to the use of mechanisms that alleviate this risk as permitted by law society rules. Similarly, where the concern is risk of impaired representation as set out in these reasons, disqualification will normally be required if the law firm continues to concurrently act for both clients.

[25] The jurisprudential guidance on conflicts is affirmed in the applicable professional regulations. The Law Society of Alberta's Code of Conduct says the following about retainers which may impact other clients:

Acting Against Former Clients

3.4-6 Unless the former client consents, a lawyer must not act against a former client:

(a) in the same matter,

(b) in any related matter, or

(c) except as provided by Rule 3.4-7, in any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

> [26] **The first two contingencies mirror the bright line rule and the third is an articulation of the principles in *MacDonald Estate.***
>
> [emphasis added]
>
> *Habina* v. *Saretsky*, 2023 ABKB 24 para. 13 - 26

119. As discussed in *Habina* v. *Saretsky* the risk of impaired representation due to divided loyalties and "the repute of the administration of justice" are important considerations in addition to concerns about potential misuse of confidential information and speak to the importance of the conflict's rules.

120. This issue is also considered in *Brookville Carriers Flatbead GP Inc.* v. *Blackjack Transport Ltd*., 2008 NSCA 22. As clearly stated at paragraph 49:

> In my view, lawyers have a duty not to act against a former client in the same or a related matter and this duty may be enforced by the courts. Although in general, the focus of the analysis will be on whether, by acting, the lawyer is placing at risk the former client's confidential information, **the duty is not limited to situations in which that is the case.** [emphasis added]

121. Mr. Denis admits, in hindsight, a "technical" breach of section 3.4-6 of the Code. The Committee finds that this was not simply a "technical breach" but a substantial breach.

122. Counsel for the LSA has also argued the Mr. Denis breached sections 3.4-1, 3.4-6 and possibly section 3.4-5 of the Code.

123. Mr. Denis took on a joint retainer of at least SL and RM knowing that there was a potential conflict. The initial emails between Mr. Denis, Mr. L and SL establish that when Mr. Denis agreed to take on both SL and RM as clients, he was aware of the liability issue. The LSA suggests that Mr. Denis breached section 3.4-5 as there is insufficient evidence that he fully discharged the duties required before accepting the joint retainer. Mr. Denis testified that he discussed the requirements with SL and RM at the initial meeting and again with BM when she signed the contingency fee agreement a few days later. In support of her argument counsel argues that Mr. Denis ceased to act for SL as opposed to RM as the initial email indicated.

124. The onus is not on Mr. Denis to prove that he met the requirements of section 3.4-5, but on the LSA to prove that he did not. The Committee is not convinced that the fact he ceased acting for SL rather than RM is sufficient evidence to establish that Mr. Denis breached this rule in light of Mr. Denis's testimony to the contrary.

125. Regarding the suggestion that section 3.4-6(c) of the Code has also been breached, the Committee notes that subsection (c) speaks to claims other than the same matter or a related matter and does not apply to this situation. However, that is not to say that Ms. Denis was not in possession of confidential information. He was, as will be discussed further.

126. Mr. Denis testified that he misinterpreted section 3.4-6 as requiring the lawyer be in possession of relevant confidential information for it to apply at all. He testified that the stated purpose set out in the commentary gave rise to this misinterpretation. Although the commentary does state that the "rule protects clients from the misuse of confidential information" the commentary read in full clearly is speaking to section 3.4-6(c) in that it provides guidance on the only circumstances in which a lawyer can act against a former client, that is on a "fresh and wholly independent matter" when the lawyer is not in possession of relevant confidential information from the prior retainer. Otherwise, the lawyer may not act.

127. Mr. Denis agreed to represent SL and obtained information as follows:

1) he advised Mr. L he would represent SL in their email exchange on August 14, 2021 which included details about the Accident and possibly her written Statement and photographs;

2) he advised that if a conflict arose, he would cease to act for RM;

3) he met with her and took personal information from her including her identification;

4) he entered into a contingency fee agreement with her;

5) he interviewed her and obtained her version of the Accident;

6) he obtained information about her health; and

7) he had an opportunity to observe her and how she might present as a witness.

128. This evidence is not in dispute and clearly put Mr. Denis in possession of privileged and confidential information, some possibly overlapping and some not. As stated in the commentary at section 3.3-1 [2], "[t]he ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge."

129. This retainer imposed on Mr. Denis a duty of loyalty to SL, a duty that cannot be extinguished by simply ceasing to act and a duty to maintain privilege and confidentiality.

130. Mr. Denis has suggested that he did not have confidential information because the version of the Accident relayed by RM was virtually identical to SL's. Even knowing that RM and SL had "virtually identical" versions is confidential information.

131. He also suggests that the information he did have was not sufficient to assess the merits of the claim until he received the RCMP report, a public record and as such not

confidential information. The evidence does not support his contention. He had confidential liability information about the circumstances of the Accident from the time of his initial email exchange with Mr. L. Although Mr. Denis denies receiving the detailed Statement and photographs with the initial email, he responds within six minutes that "[there] may be a liability issue as she was turning left and there is an onus against her. This can be rebutted with the evidence that the truck was signalling [sic] right." Mr. L and Mr. Denis both testified that their only communications were by email. Mr. Denis testified that all those communications were entered into evidence. It is hard to conceive, given his own testimony, how Mr. Denis could have provided that response he did without receiving and reviewing the Statement and photographs which are clearly and obviously confidential information.

132. The Committee finds that Mr. Denis did receive and review the Statement and photographs. Even if he did not receive and review the Statement, it is still clear that he somehow received and considered confidential information about the circumstances of the Accident, sufficient enough to identify the liability issue, provide an opinion on the onus on a left turning vehicle and how they might rebut that onus. All of this within six minutes before responding to that initial email from Mr. L. Further, the ongoing email communications on August 14, 2020 between Mr. L and Mr. Denis contain substantive liability and other confidential information, provided after he agreed to act for SL and before he agreed to act for RM.

133. The Committee finds that Mr. Denis had significant confidential information from SL and Mr. L which he either failed to recognize or failed to relay to his firm's conflict's officer, the practice advisor and the LSA investigator. In this regard, even based on his own interpretation of section 3.4-6, Mr. Denis breached the rule.

134. The Committee also finds that Mr. Denis breached section 3.4-1 and the duty of loyalty he owed to both SL and RM by continuing to act for RM when he ceased to act for SL. While Mr. Denis denies that he chose the better client because she had the better claim, public perception would likely see this differently.

135. Mr. Denis's evidence was that he ceased acting for SL following receipt of the RCMP report because of his duty not to pursue meritless claims. The Committee notes that the RCMP report was not in evidence. His letter to SL of October 27, 2020 sets out the RCMP's version of the Accident and he notes that there were no independent witnesses. Mr. Denis had this very same information from SL and Mr. L. The Statement and the August 14, 2020 emails similarly detail the circumstances of the Accident: the fact SL was turning left; the onus on the left turning vehicle; and that there were no known witnesses. The Statement and August 14, 2020 emails which he had long before the RCMP report provide even more information: that both SL and RM would state that the Truck had its right signal engaged; the possibility of video evidence; and potential that speed and configuration of the Truck may have contributed to the Accident and injuries. It is hard to imagine how the RCMP report could have changed his determination of the

liability issue sufficient to warrant the description of SL's claim as meritless only then and not when he agreed to act for her. He did not mention the RCMP report in his letter to the LSA investigator or claim in his letter, that that the RCMP report was pivotal to his liability assessment. He simply wrote, "I later reviewed the matter in further detail and, after careful consideration, believed [SL] to be at fault in the collision (at least partially if not totally)."

136. The Committee finds that when viewed through the lens of public perception Mr. Denis' loyalty to SL was "materially and adversely affected by the [his] own interest" [section 3.4-1[1]] in not pursuing a claim with a significant liability issue in favour of a claim with none. In continuing to act for RM, he not only breached his ongoing duty of loyalty to SL, but there was a significant risk of potential misuse of confidential information he had obtained from SL and Mr. L either for the benefit or detriment of RM and to the detriment of SL had she pursued her claim with new counsel.

137. The Committee finds that Mr. Denis committed significantly more than a "technical" breach of the Code.

138. Section 49(1) of the *Act* sets out two criteria for assessing whether conduct is deserving of sanction. It is conduct 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.

139. Conduct deserving of sanction is conduct that amounts to a marked departure from conduct expected of lawyers.

140. Counsel for Mr. Denis has argued that a breach of the Code is not in and of itself conduct deserving of sanction. He argues that good faith, sincerely held beliefs, and due diligence of the lawyer are evidence that the conduct will not reach the threshold of "marked departure" of conduct expected of the lawyer and is therefore not conduct deserving of sanction.

141. The cases cited by Mr. Denis's counsel do not support his arguments. Inadvertence, good faith, honest but mistaken understanding and other non-willful conduct are not sufficient to avoid a finding of sanctionable conduct when the conduct is a breach of a specific duty or Rule in the Code and is considered from the lens of public interest and the standing of the legal profession.

142. Whether actions taken in good faith are sufficient to meet the threshold for conduct deserving sanction is considered in *LSBS* v. *Hittrich,* 2019 LSBC 24. The decision states at paragraph 74 that "[w]hile the presence of *bona fides* will not excuse conduct that is

otherwise professional misconduct, advertence or *mala fides* is not required to prove professional misconduct."

143. Similarly, in *LSA* v. *Gubbins*, 2011 ABLS 26, conduct deserving of sanction was found in circumstances where the conduct was inadvertent and caused no harm, at page 82 (paragraphs 438 - 440) as follows:

> … this Hearing Committee finds that the departure from the acceptable level of service to a member of the public or to a client was unintentional, not wilful.
>
> In summary, the Member is found guilty of conduct deserving of sanction in his failure to ensure M.W. had other representation for her court appearance on April 14, 2009 and that such conduct is conduct deserving of sanction.
>
> Given that the primary purposes of disciplinary hearings are found in Section 49(1) of the *Legal Profession Act*, and these are the protection of the best interests of the public and protecting the standard of the legal profession generally, while the finding of guilt in respect of one of the citations may seem harsh, this Hearing Committee has throughout borne in mind this purposeful approach to disciplinary proceedings.

144. Counsel for Mr. Denis cites *Lyons (Re)* 2008 LSBC 9 in support of his argument that a that a mere technical breach of a Rule law will not, "in itself, constitute professional misconduct". However, the hearing panel in *Lyons* at paragraph 32 is careful to distinguish a "Rules breach" from "professional misconduct:"

> A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the *Act* or the Rules that constitutes a "Rules breach", rather than professional misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).

145. In *Lyons* the hearing panel was considering a breach of the Law Society of British Columbia's "No Cash Rule" and not a breach of the professional conduct rules set out in the Law Society of British Columbia's Code of Conduct. The Citation before this Hearing Committee is not a breach of the Rules of the LSA (Rules), but a breach of the Code and inherently professional misconduct.

146. *Groia* v. *LSC*, 2018 SCC 27 is cited as authority for the argument that a sincerely held but mistaken understanding of Rule 3.4-6 does not give rise to sanctionable conduct. *Groia* considers whether it is professional misconduct to challenge "opposing counsel's integrity based on a sincerely held but incorrect legal position" and finds that it is not "so

long as the challenge has sufficient factual foundation, such that if the legal position were correct, the challenge would be warranted" [paragraph 88]. The incorrect legal position was Mr. Groia's misunderstanding of the law of evidence and how that informed his conduct as defence counsel during trial. In *Groia* the "sincerely held but incorrect legal position" is not professional misconduct (a direct breach of a Code rule), but evidence of professional misconduct.

147. *Groia* is clearly distinguishable. Mr. Denis has not been cited for advancing or advocating a misinterpretation of the conflict of interest rules (although he did that too), but rather for breach of a specific conflict rule.

148. Ignorance of the Code cannot be determinative of whether a breach warrants sanction when considering the public interest and standing of the legal profession as required by section 49(1) of the *Act*. The Code would be redundant, the public interest would no longer be protected by the Code and the public would lose confidence in the legal profession.

149. Factors to consider when determining whether conduct rises to the level of sanctionable conduct was considered in *Law Society of Alberta* v. *Ouellette*, 2012 ABLS 4 at paragraphs 81 – 83:

> Whether conduct is deserving of sanction is a question of fact or degree in each case. In the ***Ter Hart*** case, the hearing committee provided the following factors, which are helpful in assessing whether the conduct has crossed the line:
>
> (a) Was there a specific rule or duty which was breached?
>
> (b) What conflicting duties was the member under and how evenly were they balanced?
>
> (c) Was the member favouring his personal interests over his duties to his clients?
>
> (d) Were the circumstances and duties such that it is appropriate to conclude that the member must have known at the time, or be taken to have known, at the time that the course of action chosen was wrong?
>
> (e) Was it an isolated act?
>
> (f) Was it planned?
>
> (g) What opportunity did the member have to reflect on the act or the course of action?
>
> (h) What opportunity did the member have to consult with others?
>
> (i) What results flowed from the act or course of action taken?

(j) What subsequent steps could have been taken to correct the error or its consequences and were such steps taken?

Law Society of Alberta v. Ter Hart, [2004] L.S.D.D. No. 25, para. 46.

Other relevant considerations include: Was the member acting dishonestly or in bad faith? Did the member act for personal gain? Was any effort made to conceal the actions? (See, for example, ***Law Society of Alberta v. Oshry***, [2008] L.S.D.D. No. 164.)

These factors also help inform the perception of the public in respect of the conduct in question, though they are not exhaustive.

150. Of note, exercise of due diligence, a sincerely held but mistaken legal position or actions taken in good faith are not included among these factors. Those factors do not "help inform the perception of the public in respect of the conduct in question" although they may go to determination of sanction.

151. The Committee considered the following factors and evidence in determining whether Mr. Denis's breach of section 3.4-1 and 3.4-6 of the Code is conduct deserving sanction:

1) Mr. Denis specifically breached section 3.4-6(a) when he acted against his former client(s) SL (and Mr. L) in the same matter he was retained for. This specific breach started when he ceased to act for SL until he ceased to act for RM, a year later.

2) Mr. Denis breached his duty of loyalty to SL, Mr. L and RM [section 3.4-1[1]] by acting when there was a conflict of interest. The conflict was evident from the outset as the liability issue was evident from the outset and he should not have agreed to act for both RM and SL knowing the specific liability issue. Nonetheless he did recognize the potential for a conflict and recognized he would have to cease acting for RM if liability was disputed. Had Mr. Denis ceased to act for RM, as he said he would, he may have been able to continue to act for SL as he would not have had to act against or sue RM given the nature of the liability issue. He continued to breach his duty of loyalty to SL and Mr. L while he continued to act for RM, a total period of more than fourteen months.

3) Mr. Denis's duties of loyalty and confidentiality to SL were not superceded by any duty he felt he had not to prosecute the claim. If he did not feel he could continue to prosecute the claim because of a challenging liability issue, he ought to have ceased to act for RM as well.

4) Viewed from the perception of the public, Mr. Denis ceased to act for the client with a challenging liability issue in favour of a client with no liability issue and in this respect was serving his own interests and not his clients.

5) The issue of a conflict was faced by Mr. Denis on at least four occasions, and he had four occasions to rectify the situation but did not:

   i. First when he took on the joint retainer. He recognized the issue to the extent he advised Mr. L that he would cease to act for RM in the event liability became an issue.

   ii. Second when he ceased acting for SL. There was no evidence that he considered whether he could continue to act for RM at that time although he ought to have.

   iii. Third when he considered whether he could sue SL and Mr. L in April 2021. Mr. Denis testified that he sought input from his firm's conflicts officer and a practice advisor. That advice however would have only been as good as the information he provided to them. His file notes of those discussions state that Mr. L was never a client. Regarding SL, the note of his discussion with his firm's conflict's officer states that he "was not in possession of any confidential information" and "we didn't have any confidential information in our possession that could prejudice her." The note regarding his discussion with the practice advisor states "discussed rules on acting against former clients and didn't feel this was an issue as we didn't have any confidential information and took no steps to represent her." That he had no confidential information is simply wrong and he ought to have ceased to act for RM then, even on the basis of his misinterpretation of section 3.4-6, by recognizing that he had confidential information and could not sue his former client(s).

   iv. Fourth, the conflict was raised by defence counsel in September 2021. For six weeks Mr. Denis steadfastly defended his position that there was no conflict despite defence counsel providing the alternate, and correct, reading of the rule, several offers to meet jointly with a practice advisor, and information that suggesting that Mr. Denis had confidential information. Mr. Denis did not take up the offer of a joint meeting with the practice advisor, nor did he reconsider his position. He did not, as argued by his counsel, immediately take steps to get off the file once the conflict issue was raised. He argued with defence counsel for six weeks before he recommended to BM that he cease to act for RM in order to avoid the delay and other consequences of pursuing an application to determine the conflict issue. He did not cease to act because of the conflict.

152. Acting while in a conflict interest is inherently incompatible with the public interest and harmful to the standing of the legal profession. Based on these factors and the importance of the conflicts rules to protect the public interest the Committee finds that Mr. Denis's conduct was a marked departure of the conduct expected of a lawyer.

153. The Committee finds that the citation has been proven on a balance of probabilities and that Mr. Denis's conduct is deserving of sanction.

Submissions on Citation 2

154. Counsel for the LSA argued that Mr. Denis attempted to gain a benefit for his client by threatening to make a complaint to a regulatory authority in breach of section 3.2-11 of the Code. She argued that the citation requires proof of three elements:

1) A threat to make a complaint;

2) to a regulatory authority;

3) to gain a benefit.

155. Counsel for the LSA argued that the following statements in the CD Letter and Emails meet the first two requirements of the citation:

1) "We are also aware that you are employed as a Peace Officer. Such conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue;" and

2) "Please be advised that if immediate compliance to this Is not effected we reserve the right to take further steps at law including without limitation reporting this matter to your employer as a violation of your code of conduct as a peace officer."

156. Counsel argued that the threat was intended to resolve a private grievance between DL and DN with the desired outcome of stopping the unwanted contact and gaining "peace" in DL's life.

157. The LSA further argues that the evidence of DL and EL, particularly the details of the affair and details of the content of the unwanted communications and messages, is "somewhat irrelevant" to this enquiry.

158. The position argued on behalf of Mr. Denis is that his conduct did not breach section 3.2-11 of the Code in that:

1) he did not threaten DN by offering a dichotomous choice (he simply warned her to stop doing something he believed to be unlawful);

2) he did not suggest "irrelevant behaviour" would be reported to a regulatory authority; and

3) no benefit or civil advantage was sought.

159. Mr. Denis' argument is essentially that he believed the behaviour he was trying to stop was criminal (harassment) and an employment violation (use of workplace resources to "effect" the harassment). The statements in the CD Letter and Email were simply warnings to stop the criminal behavior and workplace violation and as such no unrelated civil benefit was sought.

160. Counsel for Mr. Denis argued that the detailed testimony of DL and EL and was necessary to provide this context.

Analysis and Decision on Citation 2

161. The issue for the Committee to determine is whether the LSA has proven that the required elements of section 3.2-11 of the Code were met to sufficient to establish a breach. This section, including the commentary, states:

> 3.2-11 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:
>
> (a) to initiate or proceed with a criminal or quasi-criminal charge; or
>
> (b) to make a complaint to a regulatory authority.
>
> Commentary
>
> [1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid money, threats to take criminal or quasi-criminal action are not appropriate.
>
> [2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system. Nor is it improper for a lawyer to request that another lawyer comply with an undertaking or trust condition or other professional obligation or face being reported to the Society. The impropriety stems from threatening to use, or actually using, criminal or quasi-criminal proceedings to gain a civil advantage.

162. Section 3.2-12 [1] defines regulatory authority as including professional and other regulatory bodies.

163. The purpose of an equivalent provision was discussed in *Law Society of Ontario* v. *Fernando*, 2021 ONLSTH 63 at paragraphs 51 and 52 as follows:

> It is clearly a serious matter for a lawyer (or any other provider of a regulated service) to be threatened with a regulatory complaint. The Rule is designed to prevent a party from using that spectre to influence the lawyer's actions and thereby enforce private or civil rights. There are available recourses, such as the landlord and tenant proceeding in this case, that can properly be invoked to advance the client's interests.
>
> In short, if a lawyer believes the other lawyer is acting unethically, then apart from civil or private remedies, the appropriate course of action is to consider whether a regulatory complaint is also justified. If it is, the complaint should not be threatened; it should be filed.

164. Simply put, the question for the Committee is: Did Mr. Denis threaten a regulatory complaint against DN to influence her to satisfy or comply with his client's private or civil interests?

165. Counsel for the LSA argued that the CD Letter and Emails met the three requirements of the citation:

    1) A threat to make a complaint;

    2) to a regulatory body, and

    3) to gain a benefit.

166. Counsel for Mr. Denis argued in his written brief that the requirements of the citation are not met because "[Mr. Denis] never offered a dichotomous choice to DN, nor did he suggest irrelevant behaviour would be reported to any regulatory authority to gain a benefit in an unrelated matter."

167. Much of the oral evidence detailed the relationship between DL and DN and the extent and content of the calls and messages (none of which were put in evidence at the Hearing) which precipitated and followed their breakup. Counsel for the LSA argues that the tawdry backdrop to this matter is not relevant. Mr. Denis's counsel argues that it provides context, presumably to show criminality and unprofessional conduct.

168. While the evidence suggests that DN was behaving inappropriately, whether her behaviour would be considered tortious, criminal and/or professional misconduct is not relevant to the determination of this citation. As noted in *Law Society of Ontario* v. *Fuhgeh*, 2020 ONLSTH 75 at paragraph 286, "[t]he threat is unacceptable, regardless of the merit of the regulatory complaint that is threatened."

169. The Committee did find inconsistencies in the evidence of DN regarding her post-breakup behaviour and accepts the evidence of DL and SK where there are inconsistencies in in their testimony about DN's post break up behaviour. This testimony,

while providing context, did not assist in consideration of whether the Citation has been proven, as the merits of the criminal or regulatory claim are not relevant.

The Threat

170. The CD Letter sent by Mr. Denis to DN does four things:

1) it sets out the problem the client has brought to his attention – the inappropriate behaviour;

2) it sets out the demand – stop the behaviour;

3) it sets out the remedy which will be sought if the demand is not met – a restraining order; and

4) it reserves the right to pursue a code of conduct remedy if the problem continues, stating specifically:

> We are also aware that you are employed as a peace officer. Such conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue.

171. The LSA has argued that these words constitute the threat and that the threat is repeated in Mr. Denis's December 9, 2021 email to DN which reads:

> Please be advised that if immediate compliance to this Is not effected we reserve the right to take further steps at law including without limitation reporting this matter to your employer as a violation of your code of conduct as a peace officer.
>
> **Bluntly. This will go away and you won't get any more letters from me if you leave my client alone.**
>
> This is a serious matter and we recommend you obtain independent legal counsel as we represent the putative plaintiff in this matter and cannot represent your interests.

172. Mr. Denis argues that these words are not a threat but simply warnings intended to stop unlawful behavior and that such warnings are not inappropriate because they were not a proffered for any unintended or unrelated purpose. That is, the only purpose was to stop the possible criminal behaviour, and hence there was no benefit to his client. This is a circular argument and really turns on whether the "benefit" element of section 3.2-11 can be made out. This will be discussed below.

173. Whether called a warning or a threat, whether reserved or not, raising the possibility of "reporting the matter as a violation of your code of conduct as part of your profession" and "reporting this matter to your employer as a violation of your code of conduct as a peace officer" are threats. The Committee finds that the CD Letter and Email contain

clear evidence that Mr. Denis twice made a threat. The first element of the citation is proven.

Regulatory Authority

174. Mr. Denis admitted that peace officers are subject to regulatory oversight, and he testified that he had personal related knowledge of the process from his time as Solicitor General. His counsel argued, however, that contacting DN's employer would not constitute a complaint to a regulatory body because her employer, AHS, is not the regulatory body and the concern was her use of AHS resources.

175. The Committee rejects this argument for the following reasons:

1) First, the *Peace Officer Act*, section 14 makes it clear that disciplinary complaints are to be made to the peace officer's employer:

> Any person may, in accordance with the regulations, make a complaint in writing regarding a peace officer to the peace officer's authorized employer.

2) Second, both the CD Letter and Email refer to DN's code of conduct and her profession. Cleary the intent is to raise the "spectre" of a regulatory complaint should she not comply with his demand. The CD Letter does not refer to her employer.

3) Third, the Email adds the threat of a complaint to her employer. Her response is clear that she saw this as a threat to the job she hoped to return to one day as she immediately responded, "I know it's against your code of conduct to be threatening my job."

Benefit

176. LSA counsel argued that the benefit sought was cessation of the behaviour.

177. Mr. Denis argues that cessation of the behaviour could confer no benefit given that the behaviour may also be a criminal offence and a regulatory violation; that is, the impugned behaviour was "related" to the threat or warning, and as such no benefit was sought within the meaning of section 3.2-11. In this respect, he suggests there was no dichotomous choice offered and therefore no benefit sought.

178. The caselaw is clear that the meaning of benefit is broader than a monetary benefit and includes leveraging a litigation position or influencing settlement negotiations[3].

[3] *Law Society of Ontario* v. *Fuhgeh,* 2020 ONLSTH 75, at paragraphs 282-288; *Law Society of Ontario* v. *Manziani*, 2020 ONLSTH 123, at paragraphs 219 – 234; *Ouellette*, 2016 ABLS 53, at paragraphs 65 -70.

179. Counsel for Mr. Denis argued that in these cases cited by the LSA and other cases he cited[4] the threatening statements were unrelated to the matter the lawyer had been retained to address. He calls this the dichotomous choice and argues that the purpose of section 3.2-11 is to prohibit the offering of a dichotomous choice.

180. Section 3.2-11 of the Code does not speak to an "unrelated" benefit nor does the commentary require an unrelated benefit. What is required to prove a breach is that the threat was used to "secure the satisfaction of a private grievance." While the benefit sought in some instances may be unrelated and found to be prohibited by the rule, none of the decisions establish that the benefit must be unrelated for there to be a breach. The enquiry is always whether a benefit is sought to satisfy a private grievance.

181. Counsel for Mr. Denis argued strenuously that the CD Letter and Email were merely justified warnings to stop DN's criminal and unprofessional behaviour and that no benefit other than the cessation of the criminal or unprofessional behaviour was sought.

182. This argument is not sustainable on the evidence. It is also not sustainable because it focuses on the impugned behaviour and not the desired outcome of the demand.

183. Criminal and regulatory proceedings are taken in the public interest, not to resolve private grievances. Such complaints can have serious consequences for the individual involved and should not be threatened lightly. Section 3.2-11 is clear that if the complaint is justified, it should be made, not threatened.

184. As noted in commentary [2] to Section 3.2-11 it is not improper to make a criminal or regulatory complaint while also pursuing civil remedies, the impropriety comes from using the threat to gain a civil advantage.

185. Borrowing the hearing panel's statement in *Fernando* at paragraph 52: "If [Mr. Denis] believe[d] that [DN was] acting unethically, then apart from [the stated intent to seek civil or private remedies including a restraining order], the appropriate course of action [was] to consider whether a [criminal or] regulatory complaint [was] also justified. If it [was], the complaint should not be threatened; it should be filed."

186. A criminal complaint had already been made. Mr. Denis was not retained to pursue a criminal complaint or criminal remedy.

187. The evidence does not support the contention that Mr. Denis was sufficiently concerned that DN was breaching her code of conduct as a peace officer (whether she was on leave or not), to justify making a regulatory complaint. Nor would a complaint, had the behaviour not stopped, have achieved the outcome he was seeking.

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[4] *Law Society of Alberta* v *Wu*, 2020 ABLS 29; *Law Society of Alberta v. Mary Jo Rothecker*, 2007 LSA 20 and *LSA* v. *Kacskowski*, 2016 ABLS 36.

188. Mr. Denis's evidence was that he was told by his client that DN was a peace officer and may have been using her workplace resources to harass his client. The CD Letter and Email do not warn her to stop using workplace resources or else a complaint will be made. No party testified that they were concerned that this use of workplace resources was the behaviour they wanted stopped or that it violated her code of conduct. Further, Mr. Denis testified that he "warned" about a possible complaint to her employer not for the purpose of disciplinary proceedings, which he admitted in his testimony would be "offside", but because of his belief that her employer might also be liable for civil harassment and that the purpose of the warning was not to threaten disciplinary proceedings. During his testimony, when questioned on the threats to make a regulatory complaint, he stated:

> I recall one conversation with [AB] where she says, well, can't you go to their sergeant? To me, that would be offside. But going to somebody's employer about their resources -- an employer can also be civilly liable for civil harassment.

189. Clearly his focus was not on protecting the public interest by making a disciplinary complaint, but on the potential civil remedies available should DN not comply with the demand.

190. Further, a complaint to DN's regulatory authority would not have brought about the desired result, cessation of the behavior, if she did not comply with the demand. That remedy would only have resulted in a regulatory discipline process which is not the result Mr. Denis or his client was seeking.

191. That he was retained with respect to private or civil remedies is evident in the CD Letter where he refers to "false and defamatory claims" (a civil matter) and states his client's intent to pursue a "restraining order" (a civil remedy) if the demand is not met. Similarly, in the Email, Mr. Denis refers to his client as the "putative plaintiff" (a civil party) and in his testimony he stated that he was considering a tort action for civil harassment.

192. DL wanted the behaviour to stop and retained Mr. Denis to provide legal services to pursue that outcome. The legal remedies to achieve that outcome were either through a criminal process or a civil process, which was also threatened in the CD Letter and Email. Threatening the civil process was not in breach of the Code.

193. There is no other reasonable explanation for the threat of a disciplinary complaint, which if followed through on would not have achieved the desired result, other than to add leverage to their demand that the behaviour cease and to avoid a civil action should the behaviour continue. That the litigation was looming and not yet commenced does not detract from the purpose of the threat or the benefit sought. This is "satisfaction of the private grievance" and the benefit the threat was intended to confer.

194. The Committee finds the third requirement to prove the conduct required by section 3.2-11 has been met and that Mr. Denis raised the “spectre” of a regulatory complaint to add leverage to the civil, not regulatory, benefit he was seeking, that is cessation of the behaviour and avoidance of litigation.

195. As noted in *Fuhgeh*, quoting *Law Society of Ontario* v. *Isaac*, at paragraph 286 “attempting to use the Society’s regulatory mechanism as a way of leveraging … a litigation position shows bad faith and undermines the integrity of both the legal and regulatory processes.” Breach of this Rule is, like the conflicts Rules discussed in relation to Citation 1, a marked departure from the conduct expected of a lawyer. The Committee also finds that Mr. Denis’s conduct is deserving of sanction and that Citation 2 has been proven.

CONCLUDING MATTERS

196. The Committee has found that both Citation 1 and Citation 2 have been proven on a balance of probabilities based on clear, cogent and convincing evidence and that Mr. Denis’s conduct in each instance is deserving of sanction.

197. As indicated above, the Committee will reconvene to consider sanction on a future date.

198. The exhibits, other hearing materials, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated September 6, 2024.

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Corinne Petersen, KC

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Ronald Sorokin, KC

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Ike Zacharopoulos