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 JOHN C. ZANG A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Kathleen Ryan, KC – Chair
Sharilyn Nagina, KC – Bencher
Ike Zacharopoulos – Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta
John C. Zang – Self-represented

Hearing Date

May 14, 2024

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview and Summary of Result

1. John Zang (Zang) is a Calgary lawyer and member of the Law Society of Alberta (LSA). In 2014, Zang, acted in a manner that brought the legal profession into disrepute. For the reasons set out in the Hearing Committee decision of December 14, 2023 (2023 ABLS 27), the conduct is deserving of sanction (the Decision). On May 13, 2024, a hearing proceeded respecting sanction. The Hearing Committee determined that Zang should be suspended from the practice of law for four months. Zang is ordered to pay the hearing costs.

Evidence and Submissions

Sanction Sought

2. The LSA submitted that a suspension is the proper sanction for Zang's impugned conduct. LSA counsel said that a range of 3 to 6 months for Zang's misconduct is appropriate. The LSA seeks full costs against Zang as tendered pursuant to the LSA Statement of Estimated Costs.

3. Zang admits his conduct is deserving of a suspension, but he seeks a suspension of one month or, alternatively, a suspension only as to his securities practice so that he may maintain the remainder of his practice. Zang states that no costs should be awarded against him.

Additional Evidence tendered at Hearing on Sanction

4. The facts and findings respecting the underlying conduct worthy of sanction are set out in detail in the Decision. The Settlement Agreement includes the sanctions before the Alberta Securities Commission (ASC*).* It is also appended to the Decision and is a matter of public record: *Re Zang*, (2019 ABASC 171).

5. The LSA relied on the Decision findings. It tendered no additional evidence other than Zang's record and the Statement of Estimated Costs. Zang has no prior history of professional discipline with the LSA.

6. Zang gave evidence under oath at the Sanction Hearing. He also tendered documentary evidence. The LSA did not object to the evidence tendered, which was admitted in its entirety. However, the LSA did cross-examine Zang on some aspects of the evidence.

7. Zang graduated from law school in 1988 and practiced law in Ontario until he moved to Alberta in 1991. He articled in Calgary and became a member of the Alberta bar. Zang has had a long and productive legal career in Calgary. Before these events, Zang considered himself to be an experienced and ethical securities lawyer and businessperson. He has been heavily involved and invested in businesses, current and past, many in the energy industry. In those corporations, Zang has been a manager, director, CEO, or counsel, sometimes taking on multiple roles at once. He has counseled public companies and has, by his description and with the approval of the ASC, taken on counsel and corrective roles where public companies have otherwise run afoul of ASC requirements. Zang's curriculum vitae, marked as an exhibit in evidence, is as much a business resume as it is a legal one.

8. As noted, Zang has no prior discipline record with the LSA. He states this "mess" was the only investigation he has ever had, the only blemish on his record. He bolsters this evidence stating that in law, in business, and in his life, he has never before or since had any ethical issues.

9. Zang testified that the ASC agreed sanctions in the Settlement Agreement (Agreed Sanctions) significantly impact his practice and his business interests. The impact is "debilitating." He speaks not only to the financial impact, but also to the impacts on his life.

10. As referenced in the Decision, Zang suffered serious health issues contemporaneous with the ASC investigation. Zang strongly feels, with some corroborating medical evidence on the record, that the investigation is correlated with these serious health issues. Further, these proceedings are also a source of ongoing stress for Zang as is the reality of the outcome and impact of the ASC proceeding and Agreed Sanctions.

11. These events significantly impacted and still impact Zang's law firm. He testified that the majority of his practice before the Agreed Sanctions was corporate commercial work and securities law. That avenue, Zang said, was largely closed after the Agreed Sanctions.

Whereas before, Zang represented some twenty public companies, he now represents three or four. Even that work is largely restricted to litigation matters because of the Agreed Sanctions.

12. Zang states he now earns less than 20% of what he used to earn. The ASC Settlement Agreement was in November 2019. Accordingly, the timeline on the Agreed Sanctions will run until November 2025, after which time Zang intends to return to the roles and work he had previously undertaken. Zang has sustained major financial losses and they will continue. Zang states this outcome has impacted his relationships, his credit, his life savings, and his daily ability to manage his expenses. Zang testified, “It has affected every corner of my life.”

13. Zang also testified that he is concerned that any full practice suspension would create prejudice and adversely affect his clients.

14. Two very senior lawyers, WM and RD, and an accountant, CM, wrote character reference letters respecting Zang. Each spoke about their long relationships with Zang. Each strongly asserted that Zang is an ethical, experienced, and capable lawyer and businessperson.

15. WM, a former LSA Bencher who is now retired from the practice of law, stated that he had known Zang since Zang articled in Alberta. WM was his principal. He also knew Zang through his businesses after Zang left WM’s firm. WM said that throughout Zang’s long career, he found Zang to be a competent, diligent, and honest practitioner. He said that to his knowledge, Zang had always conducted himself in an exemplary fashion. He also knew Zang socially and had never seen Zang conduct himself in a way that would bring the profession into disrepute. WM represented Zang in his ASC proceeding and Settlement Agreement which facts founded the LSA citation here. WM said Zang had admitted guilt and wrongdoing arising out of his conduct in that proceeding and confirmed the substantial penalty received. WM also expressed his views on the penalty Zang should receive in these proceedings. These comments were akin to submissions on Zang’s behalf. They are better considered as part of Zang’s submissions below.

16. RD has practice law for over 50 years, with a particular focus on securities law. RD first met Zang in 2012 when RD was counsel for a public company. RD found Zang to be honest and forthright in his business dealings. He said Zang had strong entrepreneurial and business skills. Zang and RD forged a business relationship and friendship. RD respects Zang. Both were sole practitioners and Zang is currently sharing space with RD. RD said that he has never had any lawyer or client or anyone question Zang's integrity or conduct. On a personal level, RD finds Zang very honest and straightforward. He expressly stated that he did not condone or agree with Zang’s actions that gave rise to these matters, and he was aware of the Decision; RD focused instead on what he described as Zang's strong personal qualities.

17. Like WM, RD noted Zang’s significant personal health issues that appear connected to the ASC proceedings. He is still concerned about Zang's health.

18. Zang asked RD to specifically provide evidence to the Hearing Committee on the need to generally deter other lawyers from committing acts similar to those Zang committed. RD said the securities bar is highly ethical and compliant with the law. RD stated that it does not take a punitive statement to Zang to reinforce the risks to that bar of defaulting

on their obligations to the LSA and to the ASC. As such, he did not think that any decision will increase the awareness of securities lawyers as to their ethical responsibilities.

19. CM is a chartered professional accountant with over 40 years of business and accounting experience. Zang is CM's longtime good friend dating back to the 1990s. He and Zang also undertook multiple business ventures together in the past 30 years. Zang is also currently his personal lawyer. CM has referred business and other clients to Zang repeatedly, including small cap public companies. He said Zang has been capable and ethical and that Zang has great knowledge and expertise. He said that the matters giving rise to the Decision and the ASC proceedings were "admittedly a misstep" for Zang. However, CM said, no one he deals with in the United States or Canada has ever raised any concern to him.

20. Zang tendered a series of emails respecting the efforts he says he made to mediate this matter before hearing. Although the emails were "without prejudice," the LSA did not oppose the admission of the evidence.

21. These emails show some effort on Zang's part to engage in mediation rather than hearing. Zang said he wanted only the evidence of the Settlement Agreement before the mediator. The LSA did not agree.

22. Zang gave evidence that what he proposed is what ultimately occurred anyway at hearing. He said that pre-hearing, he intended to admit his conduct was deserving of sanction, but then wanted to "grind" the LSA on sanction in mediation.

23. LSA Counsel cross-examined Zang on this evidence. The cross-examination and the evidence showed that Zang proposed mediation, but he wanted to limit the evidence available to the mediator, and then, later, to the Hearing Committee. This was not acceptable to the LSA. The LSA intended to introduce and rely on other admissible evidence beyond the Settlement Agreement, including transcripts of interviews with Zang and other records. Zang disagreed. Zang also suggested that a reprimand was a sufficient sanction for his conduct. He did urge mediation, offering to the LSA the option to review areas of disputed evidence in mediation. The LSA first asked for a response to the proposed admitted facts. The LSA invited Zang to provide an alternative statement of admitted facts acceptable to Zang. The LSA also asked Zang to call LSA counsel to discuss the matter. Zang provided no meaningful response to these requests.

24. This evidence is relevant to sanction because an early guilty plea can be a mitigating factor in sanction. Likewise, conduct of the matter can be relevant to costs.

LSA Submissions

25. The LSA sought a suspension in the range of 3 to 6 months.

26. The LSA submitted that the Agreed Sanctions imposed through the Settlement Agreement, including a $70,000.00 payment and extensive restrictions on Zang's ability to take active roles and to trade in publicly traded companies, lasting six years, demonstrate that Zang's conduct was very serious. Although Zang was acting in a personal capacity, and KCL was not his client, Zang's expertise in securities law and the impugned conduct were "intertwined."

27. Respecting the question of Zang's efforts to mediate the matter, the LSA contends Zang's overtures were broadly stated, but conditional on the Settlement Agreement being used as the only evidence. The LSA noted that Zang never responded to the LSA's proposed statement of admitted facts or evidence. Zang did not call the LSA's counsel, as she had requested, to discuss the matter.

28. The LSA noted that, not only did Zang fail to substantively respond to LSA requests pertaining to mediation, Zang made no agreements on evidence before the conduct hearing either. When the hearing began, there was no agreed exhibit book and no agreed facts, let alone admissions. The disputed evidence extended to the Settlement Agreement, a matter of public record, which Zang willingly executed with WM as counsel. Zang continued to oppose evidence including the Settlement Agreement, the investigative report, interview transcripts, and other ASC decisions based on the same events. The effect of the objections meant that the case could not get off the ground for most of the first day of hearing. Only after a series of rulings on the evidence did Zang agree to the Agreed Statement of Facts with the LSA; it was Exhibit 33 in the hearing. The LSA noted that the first fourteen pages of the Decision addressed various objections Zang made at the hearing. As such, the LSA noted that this is not a case where Zang readily admitted that his conduct was deserving of sanction.

29. Respecting the conduct itself, the LSA relied on the findings in the Decision, which findings showed the impugned conduct to be serious. There have been significant consequences arising from the conduct.

30. The LSA, noting the required factors for consideration and their application, to be addressed *infra,* submitted that a sanction of 3 to 6 months is proper.

31. The LSA cited eight authorities in support of its proposed range for sanction and noted that no case is entirely analogous to that before us. Three authorities specifically dealt with securities matters:

    a. *Law Society of Alberta v Carlson*, 2012 ABLS 3: Carlson received a 3-month suspension for unwittingly misleading consumers on a securities prospectus for the benefit of a client. The hearing committee in *Carlson,* at paragraph 58, noted there was minimal guidance on the proper sanction for cases like these. The LSA referred to Ontario matters involving similar schemes which showed a range of sanctions anywhere from 30 days to 18 months. Aggravating factors included the massive scope of the client's fraud, lasting multiple years, involving $48 million in assets. There was major damage to investors. The harm to public confidence in the legal profession was consequential. Key mitigating factors included Carlson's innocent state of mind, the absence of a prior record, and his genuine remorse. Carlson gave up his solicitor's practice, provided an early guilty plea, and practiced without incident for seven years before the hearing.

       The hearing committee had concerns about the joint submission on sanction. Though not demonstrably unfit, that hearing committee found that a 3-month sanction "barely falls" within an acceptable suspension. Nevertheless, considering the factors at play in that matter, the suspension was sufficient to achieve the purpose of sanctioning.

b. *Law Society of Saskatchewan v Migneault*, 2017 SKLSS 7: This matter, which resulted in a 24-month suspension for the lawyer, involved much more serious conduct than did *Carlson*. Migneault facilitated the commission of fraud for his rogue client. For seven years, he falsely filed practice reports that said he did not loan money to his clients when he clearly did. Migneault involved himself in offerings to the public when the company was the subject of a cease trade order. Between 2002 and 2005, some 40,000 investors suffered defaults of at least $64 million.

   For three months after a cease trade order, Migneault continued transactions between the rogue and the investors. Aggravating factors included the facilitation of fraud in the presence of accumulating red flags over the course of a decade. The securities regulator suspended the rogue from trading in securities, but the lawyer continued to do business with him on dozens of occasions over many years without asking questions. Migneault had blind faith in the rogue and blatant disregard for the rules. Migneault's conduct was harmful to the public's perception of the profession. Migneault was not a mere dupe. He had a higher level of capability, including negligence and failure to exercise due diligence. The facilitation of fraud was only one element of misconduct proven. Migneault had multiple other aspects to this misconduct over the course of years, including filing false declarations. His conduct called into question the ability of the Law Society to regulate its members.

   In mitigation, the lawyer had no prior discipline record, was cooperative throughout the proceedings, and was generally viewed as having good character by his peers despite the allegations. He accepted responsibility for his conduct. At the time of hearing, the lawyer had already been on interim suspension of 18 months. To that, 6 months further suspension was added for a total of 24 months suspension.

c. *Law Society of British Columbia v Cole,* 2024 LSBC 3: Cole was suspended for 4 months after devising a scheme for his client to circumvent a ruling of the securities regulator. Cole's client was an insider in a public company by virtue of his position on the company board. As such, the securities regulator determined that Cole's client could not take part in a private placement. Cole advised his client to have his girlfriend participate in the private placement on his behalf. Cole's client was ultimately sanctioned for insider trading. At the time, Cole was a junior lawyer who felt he had to "do it all" on behalf of his client. There were mitigating factors. Cole readily accepted blame for his conduct. The company itself did not have a fraudulent objective; it was not a sham, but rather was a legitimate business enterprise. Nevertheless, Cole approached the matter without regard to his ethical obligations which was an aggravating factor. Cole's junior status was a neutral factor. Cole was suspended for 4 months.

32. In Geistefer[i], the lawyer went into a franchised business with a friend and former client. The lawyer failed to document any recommendation to his partner to obtain independent legal advice. The lawyer also prepared all the incorporation documents and had a 55% ownership in the business. A dispute ensued and the business partner lost his interest in the business. Geistefer was suspended for 2 months following an accepted joint submission.

33. The LSA referred to a handful of authorities involving a lawyer's unknowing involvement in mortgage fraud schemes. In *Bontorin*[ii], a lawyer unwittingly facilitated three different fraudulent flips of a property to the detriment of his lender client. The hearing committee imposed a 2-month suspension and $10,000.00 fine, but an appeal panel reinstated the joint submission on sanction made at the hearing. The lawyer received a reprimand and $5,000 fine. LSA counsel submitted that the facts in *Bontorin* represent the least egregious facts of the authorities citied.

34. The LSA also compared Zang's conduct to lawyers who have, innocently or recklessly, facilitated fraud on behalf of others. This included *Sherk*[iii] (2.5-month suspension for a lawyer who failed to guard against being a dupe for a client who committed fraud over a period of years against *Sherk's* lender clients) and *Laurich*[iv] (5-month suspension for a mortgage fraud case that included the lawyer swearing an affidavit of value for the transfer without proper grounds). Laurich had also submitted that, as a sole practitioner, his clients and staff would be unfairly prejudiced by a suspension. This did not change the sanction imposed because the conduct was so serious that a suspension could not be avoided.[v]

35. The facilitation of fraud cases cited by the LSA included *Bohun.*[vi] There, a lawyer's client fraudulently borrowed significant sums of money from various people on the false promise of high interest rates and repayment. The lawyer made representations to the lenders that it was a "loan" when the client had no intention to repay those lenders. The lawyer knew the money went to other parties and not to the client. Although not aware of the fraud, the lawyer admitted that he was reckless in his representations to lenders and that he led the lenders to believe that loans would be repaid. Bohun was suspended for 12 months.

36. The LSA sought full costs of the hearing. A recent decision of a hearing committee, namely, *Law Society of Alberta v Beaver*[vii] is currently under appeal to the Court of Appeal.[viii] There, it is anticipated that the Court of Appeal will determine whether the costs principles set out *Jinnah*[ix] apply to professional conduct proceedings outside the health professions and, in particular, whether *Jinnah* applies to proceedings under the *Legal Profession Act.*

37. The LSA also submitted that *Jinnah* and *Tan*[x] expressly contemplate costs awards in matters where the lawyer's conduct is serious.[xi] The LSA states that the conduct here was serious; therefore, full costs are proper regardless of the outcome of *Beaver* before the Court of Appeal.

Zang Submissions

38. Zang acknowledged that a suspension is the proper sanction in his case. He submitted that a one-month suspension was adequate to address the conduct described in the Decision. He also argued that if the suspension was to be longer than one month, the suspension need only apply to the practice of securities law.

39. Like his prior counsel WM, Zang said that he needed no further personal deterrence to be sure this conduct would not occur again. Zang cited his past clear history of practice for over 25 years. He submitted the Agreed Sanctions from the ASC were significant. They had life changing impacts on Zang. "The public has already been protected," said

Zang of the Agreed Sanctions. Zang also stressed that the ASC has made it impossible for Zang to reoffend.

40. Zang distinguishes the LSA cited cases, stating as follows:

    a. Virtually all of the LSA cases involved a lawyer acting in his capacity as a lawyer. This capacity requires a higher standard of care for the lawyer;

    b. The mortgage fraud cases are almost worse conduct than Zang's because, in those cases, the lawyer is not only a participant to the improper conduct, but often, the lawyer's client is a lender, which also creates a conflict of interest. The lawyer knows that their lender client is relying on them.

    c. The asset amounts in issue in *Carlson* exceeded $48 million and involved a Ponzi scheme. Carlson also used his trust account to facilitate his client's conduct. Carlson's conduct spanned many years.

    d. Migneault's conduct spanned seven years and involved sums exceeding $64 million. Even after the lawyer was aware of issues with the securities regulator, the lawyer continued to take calls from investors. The lawyer had hands on involvement in the misconduct.

    e. Likewise, the funds in dispute in *Laurich* involved several million dollars.

    f. Geistefer's conduct was not only offside the Code, but it was also arguably oppressive.

41. Zang argued that his conduct spanned just over five months, a shorter period than some of the cases cited by the LSA. At no time was Zang involved in a solicitor-client relationship with KCL or any member of the public. He acknowledged that the Code applies to all lawyers even when not acting in their professional capacity, but submitted that the cases, where a lawyer has disadvantaged a client or the public while acting as a lawyer, demonstrate more egregious conduct than Zang's conduct. At all times, he was acting as a businessperson or investor.

42. Zang argued the existence of several mitigating factors. He submitted that the prior ASC proceedings, their outcome, including the significant financial impact of the Agreed Sanctions, and the adverse health affects Zang has suffered, should be considered in mitigation of sanction in these proceedings. He further noted that no trust money was involved and that he did not materially benefit from his conduct. Zang has had no other conduct issues since this matter arose approximately a decade ago. Zang also stressed that his role as a sole practitioner, per *Geistefer*[xii] should be considered as a mitigating factor.

43. On the question of costs and willingness to accept responsibility for his conduct, Zang argued he was prepared to mediate this matter. He submitted that it was surprising that the LSA was holding out for an agreement as to evidence. Zang said that the facts could have been discussed and negotiated in mediation. If the matter had been mediated, the hearing might have been avoided. He cites and relies primarily on *Jinnah* and *Tan* respecting costs.

44. Citing *Wheat*[xiii] Zang states that his multiple objections as to evidence in the hearing, and his defence generally, should not count against him. Zang is fully entitled to advance his defence. That vigorous defence ought not be considered an aggravating factor on sanction.

45. Zang cited two authorities on sanction: *Law Society of Alberta v Shea,* 2013 ABLS 13 and *Law Society of Alberta v Abdi,* 2014 ABLS 9.

46. In *Shea*, a lawyer who volunteered as a football coach and fundraiser at his former high school for years was disciplined for failing to follow regulatory requirements as a volunteer. In that time, Shea started two not-for-profit societies for the benefit of players who were in financial need, graduate students attending post secondary schooling, and the school itself. Shea sat on the board of the entity, including occupying the position director and officer. His firm was the registered office. Over a period of many years, the entity raised funds through casinos, bingos, and other non-gaming activities like silent auctions. The fundraising and reporting for gaming activities such as bingos and casinos was governed by the Alberta Gaming and Liquor Commission (AGLC), applicable laws, and regulations. The AGLC conducted an audit for a three-year window and found inadequate reporting and record keeping. The society was fined $500.00 by the AGLC. The cumulative amounts which lacked proper record keeping and accounting to the AGLC were just over $267,000.00, a relatively substantial sum. Shea's family members, who attended the school, at some point received some $27,000.00 in financial benefit from the societies. Shea also initially failed to respond to the LSA which resulted in an investigation order being issued. Shea then worked cooperatively with the LSA through to the conclusion of the matter. Shea and the LSA tendered an agreed statement of facts as well as a joint submission for reprimand and $1,500.00 fine. The hearing committee determined that a reprimand was sufficient.

47. Zang cited this case not because the facts were analogous to his, but to show the range of sanction available for failing to meet the requirements of an Alberta regulator. Zang admits that the "noise" that accompanies a breach of Alberta securities legislation is different from that for a breach of AGLC regulations.

48. In *Abdi,* a very junior lawyer without adequate senior lawyer supervision committed a series of Code breaches, including failing to respond to the LSA, misleading another lawyer, and failure to adequately supervise staff on a real estate transaction. The lawyer readily admitted guilt, cooperated with the LSA, and signed an agreed statement of facts. The events were so stressful that the lawyer voluntarily ceased practicing law and only returned later with an agreement to work with the LSA's practice management department. The hearing committee found the lawyer's breaches were due to inexperience and that there were no concerns respecting the lawyers' integrity despite these events. The LSA and Abdi made a joint submission for a reprimand which was accepted. Zang cited this case to show that even a reprimand can be an adequate denunciation of conduct.

Analysis

Purpose of Sanction and Factors for Consideration

49. The LSA Hearing Guideline (Guideline)[xiv] sets out the purpose of sanction at pages 27 to 33. The core purpose of sanction is twofold. First, the public must be protected from acts

of professional misconduct. Second, the public's confidence in the integrity of the profession must be maintained. Other purposes of sanction can include deterrence, specific and general, governance, and denunciation.

50. The Guideline sets out factors to be considered. Heavier weight is placed on factors that go to the fundamental principles of public protection and public confidence in the profession. This requires a purposeful approach.

51. Included in the factors to be considered in sanction are the seriousness of the misconduct, its risk to the public, its impacts on the public's confidence in the profession, its harm to the profession's reputation, its harm to the public and profession, and its impact on the ability of the legal system to properly function. The length of misconduct and number of impugned acts matter. Likewise, the intent of the lawyer and their state of mind can be important factors in sanction. The severity of conduct must be considered, including whether a lawyer engaged in dishonesty or deceit and whether a lawyer has interfered with the administration of justice. (Guideline pages 27-32)

52. The Committee should also consider, in addition to the factors above, whether there are aggravating or mitigating factors. These include the existence of a prior discipline record (or lack of one), the length of time the lawyer has been in practice, personal medical or mental circumstances at the time that may have contributed to the misconduct, rehabilitation, remorse, personal gain to the lawyer, acknowledgement of wrongdoing, and the lawyer's cooperation in the hearing and pre-hearing stage. (Guideline page 32, paragraph 204).

53. Where the lawyer's conduct brings the public's perception of the profession into disrepute or otherwise causes the lawyer's integrity to be brought into question, these are significant factors in sanction. For sanctioning purposes, the Guideline emphasizes the importance of a lawyer's integrity. A lawyer that engages in dishonourable conduct, whether in practice or private life, reflects adversely on the public's perception of the profession's integrity and administration of justice. (Guideline, paragraph 201, 202)[xv]

Sanction Decision

54. The impugned conduct described in the Decision is serious conduct for any lawyer, but particularly so for a securities lawyer. The conduct extended over a period of months. Even after knowledge of the cease trade order, when Zang believed there was something "nefarious" going on with P and KCL, a time where he described the revelation as a "trigger," he continued to work with P to further KCL's and his personal objective.

55. We agree that Zang was not acting as a lawyer during the critical time. However, he used his specialized knowledge of securities law in an effort to circumvent the cease trade order and Alberta law, law that he should have known with certainty prevented his proposed course of action. In this regard, both his experience and expertise in securities law belied any argument that Zang was simply acting as an "investor" or businessperson.

56. Unlike the authorities involving junior lawyers, Zang was an experienced, senior securities lawyer. He knew better than to act the way he did. His conduct was not an accident; Zang did what he did for profit. Unlike lawyers who were unwitting participants

in their clients' misconduct, Zang used his specialized knowledge of the law to further his objectives for Zang's financial gain. For this reason, Zang's impugned conduct being primarily personal rather than professional is, at best, a neutral factor in sanction.

57. While it is true that Zang ultimately gained little financially through his conduct, it was not for his lack of effort. Indeed, the reason that he did not succeed financially, in large part, was because the ASC imposed a cease trade order on KCL. Even this did not stop Zang, however, as he schemed with P to gain market entry to the United States through an over-the-counter exchange based on misleading and materially false documents created expressly for this purpose. He funded a promotional campaign to artificially inflate the share value of KCL.

58. Zang has suffered greatly as a result of his conduct. The outcomes have been devastating to him personally, professionally, and financially. However, these outcomes are the logical consequence of Zang's own decisions and conduct. He did not make bad decisions because of his health. Rather, his bad decisions were a factor in his later health issues.

59. That said, consistent with the *Abdi* decision, it is appropriate to consider the fact that Zang has incurred other serious penalties as well as personal and financial loss as a result of these circumstances.

60. We note this operates as something of a double-edged sword for Zang on sanction. On the one hand, Zang has already suffered serious consequences. On the other hand, another regulator has determined that his conduct merited significant sanction. The ASC governs a major part of Zang's law practice. The LSA, Zang's own regulator, must have regard for these serious findings. To do otherwise would violate the purposes of sanction and be a disservice to the public and to the profession.

61. Indeed the Settlement Agreement and Agreed Sanctions are clearly targeted to public protection. The LSA also has a primary mandate to protect the public interest. In this case, some of the most significant concerns of the Hearing Committee relate to Zang's willingness to manipulate records like the questionnaire and the Share Compensation Agreement to suit his personal needs. It was entirely appropriate for the LSA to tender evidence outside of the Settlement Agreement. It is also relevant that Zang provided inconsistent accounts of the events to investigators over time.

62. We find that Zang has shown relatively little remorse. Zang said that he apologizes to himself and "the rest of the world" every day. Although Zang clearly has profound regret about his personal outcomes, we heard little about his regret for the public investors that relied on artificially inflated values for KCL shares. We heard little about the prejudice and sanction that befell Zang's former broker by reason of Zang granting unfettered authority to P to Zang's trading account. Zang's regret seems more focussed on the personal impact to him, his health, and his practice as opposed to the impact to the public and to the profession at large. He does not appear focused on the public interest and the extent to which its confidence in the profession is impacted by his conduct.

63. Likewise, we cannot agree with the suggestion that considering general deterrence in sanction is unnecessary because the securities bar would not engage in the kind of conduct that Zang did. The vast majority of lawyers engage in consistent and daily ethical conduct in their personal and professional lives. If this argument were to succeed,

no sanction would ever be necessary on the basis of general deterrence because lawyers almost invariably conduct themselves honourably anyway. The high ethics of the Alberta bar ought not reduce an otherwise appropriate sanction for Zang on these facts.

64. Even if other lawyers would not commit the same conduct that Zang did in the same circumstance, a failure to provide a meaningful sanction for this conduct would be highly problematic. It could result in a loss of public confidence in the profession, in the public's perception of the integrity of the profession, and in the profession's ability to properly supervise the conduct of its members. The primary purposeful approach to sanction would fail. A member of the public could only see this conduct as very serious. The sanction must reflect the severity of the conduct.

65. Zang's clean record, and his many decades of ethical, competent practice, before and after these events, are mitigating factors in sanction. So too is Zang's otherwise ethical conduct in his personal and business life. He has strong support and respect from WM, RD, and CM who are colleagues in the legal and business community. These character references also state that this respect extends beyond them to the legal and business community at large. Although it is not unusual for a lawyer facing discipline to have peer support, this is also a mitigating factor in sanction. Collectively, this evidence should leave one with a reasonable expectation that Zang will never undertake this kind of conduct again.

66. We do not believe that a suspension restricted to one area of practice is proper or useful in this case. First, a narrow suspension would be very difficult to monitor and supervise for the LSA. More importantly, given the other restrictions on Zang from the Agreed Sanctions, it may render any suspension largely moot. The suspension applies to Zang's entire practice. This is the only way that the purposeful approach and objective of sanction can be met.

67. We agree with Zang that his defence, even a vigorous defense where he makes unsuccessful arguments, ought not to be treated as an aggravating factor. Lawyers are entitled to advance a full defence and to contest the citation and underlying evidence. This cannot be an aggravating factor in sanction. Rather, Zang does not get the benefit of any mitigating considerations for early resolution, readily admitting his wrongdoing, or streamlining a hearing through reasonable admissions.

68. Respecting the question of whether the matter could have been earlier resolved by mediation, we do not agree with Zang that this matter would have been resolved at mediation. Zang made overtures at mediation, but imposed conditions on mediation that made resolution unlikely in any event. Given Zang's prior extensive litigation of the ASC proceedings where Zang made least 15 applications and appeals, it was reasonable for the LSA to require basic evidentiary parameters for mediation. The LSA and its counsel have acted properly throughout these proceedings.

69. Indeed, from the outset of the hearing Zang made multiple unsuccessful evidentiary objections. As LSA counsel noted, Zang's various objections to the evidence and to the Hearing Committee composition consumed roughly the first fourteen pages of the Decision. As a result, we cannot say that Zang mitigated his circumstances by efforts to admit fault or work cooperatively with the LSA; however, we do not find any litigation misconduct or aggravating factor in sanction resulting from the hearing or the way the LSA pre-hearing process unfolded.

70. Having regard to the appropriate factors, and the purpose of sanction, particularly respecting the need for the public to have confidence in the profession, we find that an appropriate sanction in this case is four months.

Costs Decision

71. Respecting costs, we need not address the question of whether the *Jinnah* principles limiting costs for regulatory disciplinary proceedings apply to the legal profession. Presumably, *Beaver* will be decided in due course and that question will be answered. However, in this case, Zang's conduct was serious. The Decision reflects a pattern of intentional conduct over months that was deliberately designed to benefit Zang personally. He knowingly violated and made efforts to improperly circumvent Alberta securities laws and a cease trade order for his own gain. This conduct was serious.

72. This conduct fits within the exceptions under *Jinnah*, regardless of whether the broader limiting principles apply to the legal profession.[xvi] Costs are awarded as per the LSA Estimated Statement of Costs in the amount of $47,347.46. Zang will have one year from the date of this decision to pay these costs.

Concluding Matters

73. The start date for the four-month suspension may be coordinated between the LSA and Zang. This flexibility is given to protect Zang's clients and to provide options to make arrangements for coverage. Regardless, the suspension shall begin no later than two months from the date of this decision and continue for four consecutive months.

74. No referral to the Attorney General is necessary. The required Notice to the Profession respecting this decision will issue.

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

Dated August 12, 2024

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Kathleen Ryan, KC

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Sharilyn Nagina, KC

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Ike Zacharopoulos

[i] *Law Society v Geistefer*, 2016 ABLS 20
[ii] *Law Society v Bontorin*, 2015 ABLS 9
[iii] *Law Society of Ontario v Sherk*, 2021 ONLSTH 142
[iv] *Law Society of Alberta v. Laurich*, 2014 ABLS 45
[v] *Laurich* at para 81, citing the *Law Society of Upper Canada v. Senjule*, 2008 ONLSHP 22 (CanLII), 2008 ONLSHP 0022, para. 29. The LSA hearing committee stated, "The effect of a penalty on a particular lawyer's practice can be a consideration, but cannot …disproportionately mitigate the need for general deterrence'."
[vi] *Law Society of British Columbia v. Bohun,* 2003 LSBC 8
[vii] *Law Society of Alberta v* Beaver, 2023 ALBS 4.
[viii] At the time of this decision, there is no reported judgment.
[ix] *Jinnah v Alberta Dental Association and College,* 2022 ABCA 336
[x] *Dr Ignacio Tan III v Alberta Veterinary Medical Association,* 2024 ABCA 94, paragraphs 31-36
[xi] *Jinnah* page 42
[xii] Paragraph 13
[xiii] *Law Society of Alberta v Wheat*, 2022 ABLS 9 at para 35 and 36, including the authorities cited therein
[xiv] Law Society of Alberta Pre-Hearing and Hearing Guideline, June 3, 2022
[xv] Zang also provided the Hearing Committee with authority respecting these factors that largely mirrors the Guideline. The hearing committee in *Abdi* described the factors as follows:

> When deciding how the public interest should be protected through the sanction process, the Hearing Committee is invited to take into account various factors, including a) the nature and gravity of the misconduct, b) whether the misconduct was deliberate, c) whether the misconduct raises concerns about the lawyer's honesty or integrity, d) the impact of the misconduct on the client or other affected person, e) general deterrence of other members of the profession, f) specific deterrence of the particular lawyer, g) whether the lawyer has incurred other serious penalties or other financial loss as a result of the circumstances, h) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, i) the public's denunciation of the misconduct, j) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct, and k) imposing a penalty that is consistent with the penalties imposed in similar cases. In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions that may be imposed including the lawyer's conduct since the misconduct, the lawyer's prior disciplinary record, the age and experience of the lawyer and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility: *Law Society of Alberta v Elgert*, 2012 ABLS 9.

[xvi] See also *Law Society of Alberta v. Ralh*, 2023 ABLS 9 (CanLII) paragraphs 37-48