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 JAY CAMERON AND JOHN CARPAY
MEMBERS OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Troy Couillard - Chair and Lawyer Adjudicator
Cheryl McLaughlin – Public Adjudicator
Darlene Scott, KC – Former Bencher

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta
Alex Steigerwald - Counsel for Jay Cameron
Alain Hepner, KC – Counsel for John Carpay

Hearing Dates

February 18, 2025 (application)

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed to hearing by the Conduct Committee Panel on February 13, 2024:

    1) It is alleged that Jay Cameron failed to discharge all of his responsibilities to his clients, the Court, the public, the Law Society of Manitoba and other members of the profession honourably and with integrity, and that such conduct is deserving of sanction.

    2) It is alleged that John V. Carpay failed to discharge all of his responsibilities to his client, tribunals, the public and other members of the profession honourably and with integrity, and that such conduct is deserving of sanction.

2. John Carpay and Jay Cameron (Lawyers) are members of the Law Society of Alberta (LSA). They were entitled under the National Mobility Agreement (NMA) to practice in Manitoba. They became involved in litigation challenging the constitutionality of public health restrictions which Manitoba put in place to respond to the COVID-19 pandemic, Chief Justice Joyal presiding (Gateway Case). Together, they executed a plan to hire a

private investigator (PI) to attempt to capture images of Chief Justice Joyal breaching the COVID restrictions while Chief Justice Joyal's decision was on reserve. They were not entirely forthright with the Court when the plot was revealed. Pursuant to the NMA, the LSA agreed that the Law Society of Manitoba (LSM) would assume conduct of the investigation and discipline proceedings. During that hearing, it was agreed that the LSM did not have jurisdiction to suspend or disbar Alberta lawyers; the LSM ordered (among other things) that the Lawyers could never again practice law in Manitoba.

3. The Lawyers were also charged criminally, with attempting to intimidate a justice system participant and attempting to obstruct justice. The criminal matter was resolved with the Lawyers entering into a civil peace bond directing that they cannot practice law anywhere in Canada for three years, and the Crown directing a stay of proceedings regarding the charges.

4. The LSA now seeks further sanction in Alberta regarding the conduct that occurred in Manitoba, despite the LSM having already disciplined the Lawyers regarding the same conduct. The Lawyers apply to this Hearing Committee (Committee) for a resolution that these proceedings be discontinued, pursuant to section 62(2) of the *Legal Profession Act* (*Act*). They argue that the LSA lost its authority to impose any further discipline because: (a) a proper reading of the Rules of the LSA (Rules) and the NMA means that the LSA exhausted its jurisdiction when it agreed that the LSM would conduct the investigation and proceedings; (b) the LSA is estopped from attempting to impose further discipline; and (c) proceeding now amounts to "double discipline" and is an abuse of process.

5. For the reasons that follow, the application is dismissed.

Preliminary Matters

6. 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 the Lawyers' conduct proceeded, beginning with this application.

Exhibits and other documents

7. The following exhibits were entered into evidence by consent of all parties:

#1: Letter of appointment dated October 1, 2024;
#2: Amended Notice to Attend dated November 7, 2024;
#3: Certificate of Status – Jay Cameron dated February 4, 2025;
#4: Certificate of Status – John Carpay dated February 4, 2025;
#5: Letter of Exercise of Discretion dated February 4, 2025;

For Mr. Carpay:
#6: S.S. letter to LSA dated June 11, 2024;
#7: N.M. letter dated August 4, 2021;

For Mr. Cameron:
#8: Affidavit of S.B. affirmed January 22, 2025;
#9: Affidavit of A.H. affirmed January 21, 2025; and

Additional exhibits for the LSA:
#10: Affidavit of S.C. sworn February 6, 2025.

8. The legal briefs that were submitted included other documents which the Committee has considered, with the parties' agreement. They are not enumerated here but we assure the parties that they have been considered.

Facts/Background

9. Mr. Carpay and Mr. Cameron were called to the Bar in Alberta in 1999 and 2008, respectively. At the times relevant to this hearing they were both practicing lawyers in Alberta, with no formal disciplinary record. They were entitled under the NMA to practice law in Manitoba for up to 100 days without enrolling in the LSM. Neither Lawyer has ever been a member of the LSM.

10. On July 12, 2021, the LSA received complaints regarding the Lawyers from a member of the public (LSA Compliant). The LSM received similar complaints.

11. On August 4, 2021, N.M. of the LSA wrote to the Complainant, Cc'd to the Lawyers. The letter includes:

> As the Law Society of Manitoba is the proper jurisdiction for such an investigation, pursuant to Rule 73.2 of the Rules of the Law Society of Alberta (the "Rules"), the Law Society of Alberta and the Law Society of Manitoba have agreed that the Law Society of Manitoba assume responsibility for the proceedings. Further, the Law Society of Manitoba has made a request for information and cooperation from the Law Society of Alberta, and I confirm that the Law Society of Alberta has and will continue to fully cooperate with their investigation pursuant to Rule 73.2(5) of the Rules. Should additional concerns arise, the Law Society may pursue them, depending on the outcome of the Law Society of Manitoba proceedings.
>
> Accordingly, the Law Society of Alberta will not be taking any steps in relation to your complaint. While our file will be closed, the information you have

provided will be forwarded to the Law Society of Manitoba for consideration as part of their ongoing investigation.

12. The LSM issued its citations against Mr. Carpay on July 5, 2022. It issued citations against Mr. Cameron on July 5, 2022 and January 2, 2023, which were replaced on August 16, 2023.

13. On December 14, 2022, the Winnipeg Police Service charged both of the Lawyers with attempting to intimidate a justice system participant contrary to section 423.1(1)(b), and attempting to obstruct justice contrary to section 139(2) of the *Criminal Code*, RSC 1985, c C-46.

14. On March 28, 2023, counsel for Mr. Carpay contacted the LSA to ask if a suspension in Manitoba would have consequences in Alberta. Counsel was directed to a Practice Advisor.

15. On April 23, 2023, counsel for Mr. Cameron asked LSA Conduct Counsel about potential discipline in Alberta after the conclusion of the LSM proceedings. Conduct Counsel advised that the LSA was awaiting the outcome of the LSM proceedings before considering its position, and directed the lawyer to Rule 73.2(9), which provides that a finding of guilt in the LSM proceedings would be proof of misconduct in Alberta. Conduct Counsel confirmed her advice in writing. She provided the same advice to counsel for Mr. Carpay.

16. Counsel for Mr. Carpay wrote to LSA Conduct Counsel to update the LSA regarding the LSM proceedings and seek confirmation that the LSA would not take any further steps. Conduct Counsel repeated on August 2, 2023 the advice she had provided on April 24, 2023.

17. The Lawyers executed agreed statements of facts in the LSM proceedings, and the citations against Mr. Cameron were replaced with another citation dated August 16, 2023 to encompass those facts. They pleaded guilty to the citations before a panel of the LSM Discipline Committee on August 21, 2023. Mr. Carpay admitted that his conduct was unbecoming of a lawyer, and Mr. Cameron admitted that his actions were professional misconduct. Importantly, the LSM Discipline Committee had the benefit of email correspondence which Chief Justice Joyal did not have, which add context to how the surveillance came to be and for what purpose.

18. The LSM Discipline Committee panel accepted counsels' advice that it did not have jurisdiction to suspend or disbar the Alberta Lawyers. Counsel for both of the Lawyers mentioned the possibility of further proceedings in Alberta. The LSM Discipline Committee issued its decision accepting the joint submission on September 15, 2023: *The Law Society of Manitoba v Carpay, Cameron*, 2023 MBLS 10.

19. The criminal charges were resolved with a plea agreement and joint submission on October 27, 2023. The Lawyers agreed to enter into a common-law peace bond that prohibits them from practicing law anywhere in Canada for three years, in exchange for the Crown directing a stay of proceedings of the charges. (The effect of the stay is that, if the Attorney General does not recommence those proceedings within a year, then those proceedings are deemed never to have been commenced: *Criminal Code*, section 579(2)).

20. By letter dated November 16, 2023, LSA Conduct Counsel advised the Lawyers' counsel that, as the Manitoba proceedings were now over, she would now conduct her own assessment of the LSA Compliant to decide whether to dismiss the complaint or refer the matter to a Conduct Committee panel. On February 13, 2024, a panel of the Conduct Committee issued the citations that are now before this Committee.

21. The Lawyers filed Notices of an application to quash or dismiss the citations, and/or to quash, dismiss, and/or discontinue these disciplinary proceedings. During oral argument on February 18, 2025, it was agreed that the hearing had begun, with the application to be treated as a part of it. All parties agreed that the application could properly be characterized as an application for discontinuance pursuant to section 62(2) of the *Act* which reads:

> 62(2) If a Hearing Committee has commenced its hearing in respect of the conduct of a member and is satisfied that the circumstances of the conduct do not justify the continuation of its proceedings respecting that conduct, the Hearing Committee may, by a resolution setting out the reasons for its decision, discontinue its proceedings in respect of that conduct.

Analysis

22. The Lawyers argue that the LSA cannot attempt to impose further discipline because:

(a) a proper reading of the Rules and the NMA means that the LSA exhausted its jurisdiction when it agreed that the LSM would conduct the investigation and proceedings;

(b) the LSA is estopped from attempting to impose further discipline; and

(c) proceeding now amounts to "double discipline" and is an abuse of process.

The LSA retains jurisdiction over its members.

(i) The NMA and applicable LSA Rules

23. The first argument turns on an interpretation of the NMA and Rules. The relevant provisions of the NMA are at paragraphs 28 to 31:

> [28] In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
>
> a. assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
>
> b. consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.
>
> [29] If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.
>
> [30] In determining the location of a hearing under clause 28, the primary considerations will be the public interest, convenience and cost.
>
> [31] A governing body that initiates disciplinary proceedings against a lawyer under clause 28 will assume full responsibility for conducting the proceedings, including costs, subject to a contrary agreement between governing bodies.
>
> [32] In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

24. The relevant provisions of the Rules that were in force at the time the complaint arose are strikingly similar:

> 73.2 (1) If there is an allegation of misconduct against a member of the Society while practicing temporarily in the jurisdiction of an NMA governing body, under provisions equivalent to Rule 72.2 or 72.5, the Society will:
>
> (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings.

(2) Where subrule (1) applies, the Society may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (2), including expenses of the proceedings.

[…]

(4) In deciding whether to agree under subrule (2) or (3), the primary considerations will be the public interest, convenience and cost.

(5) Notwithstanding Rule 45, on the request of a governing body that is investigating the conduct of, or has initiated a disciplinary proceeding against, a member or former member of the Society, a student-at-law or former student-at-law of the Society, or a visiting lawyer who has provided legal services, to the extent that it is reasonable in the circumstances, the Executive Director must:

(a) provide all relevant information and documentation respecting the lawyer or the visiting lawyer as is reasonable in the circumstances;

(b) cooperate fully in the investigation and any citation and hearing.

(6) Subrule (5) applies whether or not the Society agrees with a governing body under subrule (2) or (3).

[…]

(9) A duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct is proof of the lawyer's guilt.

25. The Rules were amended in 2025 (2025 Rules). The relevant change is the addition of "or" in Rule 73.2(1)(b):

(b) assume responsibility *or* agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings including the expenses of the proceedings (emphasis added).

(ii) The parties' position

26. The Lawyers argue that a plain reading of NMA paragraph 28 means that the home governing body loses its jurisdiction to discipline its members if it agrees that the host

governing body will assume responsibility for the conduct and disciplinary proceedings. This is necessarily implied by paragraph 30's guidance regarding choosing which body will assume responsibility. They make the same argument regarding the 2025 Rules; the LSA must choose where the proceedings against its members will occur, and it loses any ability to discipline its members if the hearing is in the host jurisdiction. They argue that NMA paragraph 28(9), Rule 73.2(9), and 2025 Rule 73.2(8) are intended to enable record keeping only, and do not contemplate further LSA proceedings. During submissions, they argued that dissimilarities between the Rules and other law societies' Acts and Rules are evidence that this effect is an intentional choice of the drafters of the NMA and the Rules; i.e. the signatories to the NMA intentionally chose to extinguish their authority over their members if they agree that the host jurisdiction would assume responsibility, knowing that the host jurisdiction can neither suspend nor disbar the Lawyers.

27. The LSA argues that reciprocal enforcement is expected. Section 84 of the *Act*, which permits discipline against an LSA member who is disciplined in another jurisdiction where they are also a member, does not apply but this situation is analogous. Nothing in the NMA or Rules detracts from the LSA's authority over its own members. The fact that a certified copy of another governing body regarding the lawyer's misconduct is proof of the lawyer's guilt implies the authority to consider that misconduct in LSA proceedings; the second hearing is mandatory before the LSA can discipline its own member.

(iii) Principles of Interpretation

28. The Alberta Court of Appeal applied principles of statutory interpretation to the Rules of Court in *Canadian Natural Resources Limited v Shawcor Ltd*, 2014 ABCA 289 at paragraph 30, leave to appeal to SCC refused 45277 (23 May 2019). Specifically, the Court relied on the well-known passage found in the Supreme Court of Canada decision of *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at paragraph 21:

> Although much has been written about the interpretation of legislation […] Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament.

29. The Supreme Court of Canada later held that "… where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words of the scheme of the Act are more expansive": *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at paragraph 27. The same Court later held that an "administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue …": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 121.

30. The Alberta Court of Appeal has also held that interpretation of rules includes consideration of the rule's purpose, and that "… the legislature is presumed to have intended its statutes to apply in a way that is not contrary to reason and justice": *Paragon Capital Corporation Ltd v Starke Dominion Ltd*, 2020 ABCA 216 at paragraphs 37-41.

(iv) The correct interpretation of the NMA and Rules

31. None of the parties were able to provide a precedent directly on point regarding the arguments raised. The cases that were provided do illustrate the importance of mutual enforcement, but all of them include express authorization for it similar to section 84 of the *Act*. Whether the LSM's Order amounts to a "*de facto* disbarment" does not affect this part of the analysis; we are concerned with the Lawyers' conduct and the LSM's findings, not the LSM's ultimate Order. The criminal proceedings in Manitoba are also irrelevant here.

32. We start from the premise that a law society must have jurisdiction to respond to its own members' misconduct, and that its jurisdiction (which is derived from statute) cannot be altered without express language demonstrating legislative intent. Nothing in the NMA or pre-2025 Rules purports to extinguish the LSA's authority in this case. We do not see that permitting the host jurisdiction to "assume responsibility" implies a complete and permanent abdication of the LSA's authority over its members, which would be inconsistent with the LSA's role of regulating in the public interest in Alberta. The NMA and Rules require that the LSA cooperate with the host jurisdiction, but they do not indicate that the LSA cannot also take the lawyer's conduct into account when considering whether to exercise its discretion regarding its own disciplinary process.

33. NMA paragraph 32 and pre-2025 Rule 73.2(9) are essentially rules of evidence. The certified copy of the other law society's decision is proof of the facts and finding of misconduct contained therein. The certified copy cannot simply be intended to assist the LSA with its record keeping, in the sense of entering on the lawyer's record, because placing that blemish on a member's disciplinary record would itself require a decision of a hearing committee. These provisions necessarily imply that the LSA may act on a "sister jurisdiction's" findings regarding a member's conduct.

34. The LSA retaining its authority is harmonious with the national scheme of the NMA. For example, Manitoba's Act provides that a member is guilty of professional misconduct if another disciplinary authority opines that the lawyer would have been disbarred, etc., if the lawyer had been a member of that jurisdiction (*Legal Profession Act*, CCSM c L-107, section 74). New Brunswick's Act is the same (*Law Society Act, 1996*, SNB 1996, c 89, section 61.1). What the Lawyers argue amounts to evidence of an intention that discipline proceedings can only ever occur in one jurisdiction, the Committee considers is evidence of an intention of how the NMA is intended to operate. Mutual respect among the law societies for each others' disciplinary processes is consistent with the scheme of the NMA that does not imply an intention to extinguish their authority over their own members. It would be odd indeed if, when the various law societies negotiated the NMA, Alberta chose to extinguish its authority while other provinces did not. An "either/or" approach is inconsistent with the grander scheme.

35. With respect, the Lawyers' narrow interpretation is contrary to reason and justice. It would see the LSA unable to strike from the rolls a member who is obviously unfit for practice (this descriptor is *not* to be taken as a comment on the Lawyers in this case), only because the LSA member was not also a member of the other jurisdiction such that section 84 of the *Act* would apply. Unscrupulous Alberta lawyers would have a disincentive against enrolling in law societies outside Alberta, knowing they could not be disbarred if they were disciplined in the jurisdiction where the conduct occurred.

36. We do not find that N.M.'s letter of August 4, 2021 is his legal opinion that the LSA could do nothing after agreeing that the LSM would assume responsibility for the proceedings. Indeed, he wrote that "[s]hould additional concerns arise, the Law Society of Alberta may pursue them, depending on the outcome of the Law Society of Manitoba proceedings." The letter might have been clearer, but it could not affect our opinion because the Committee would not be bound by an incorrect statement of the law: *R v Barabash*, 2015 SCC 29 at paragraph 54.

37. We agree with Mr. Steigerwald that the fact that counsel for both of the Lawyers mentioned during the LSM proceedings that the Lawyers will face disciplinary proceedings in Alberta is neither a legal opinion nor a concession that the LSA can validly proceed to sanction the Lawyers. The Lawyers are now facing proceedings in Alberta, whatever the outcome of this application. As noted above, this Committee would not be bound by counsel's statement of the law in any event.

38. The fact that the Alberta citations are identical to the Manitoba citations is immaterial to this analysis. We are concerned with substance of the Lawyers' conduct over the form of the citations. The LSA intends to rely on the LSM decision as proof of the LSA citations, so the fact that the Alberta citations are the same as the Manitoba citations is unsurprising lest there be an argument regarding proof.

39. In conclusion, this Committee interprets the NMA and Rules such that the LSA did not abdicate its authority to the LSM by agreeing that the LSM would assume responsibility for the investigation and disciplinary proceedings. The drafting of the NMA and Rules does not preclude the LSA pursuing discipline in Alberta. We intend that our conclusion applies to the Rules that were in force at the relevant time; consideration of the effect of the 2025 amendments, if any, should wait for another case in which the amended rule is applicable.

Estoppel, res judicata, and functus officio do not bar these LSA proceedings.

(i) The parties' position

40. The Lawyers argue that the current proceedings cannot proceed because the preconditions to estoppel have been met. Essentially, everything that needs to be decided has already been decided, making these proceedings duplicative of the LSM proceedings. They disavow reliance on "promissory estoppel". They also argue that *res judicata* and *functus officio* apply. The Lawyers' points regarding "double discipline" are better addressed in the abuse of process analysis.

41. The LSA argues that the preconditions of estoppel have not been met. The issues have not been decided, and the LSM is not the LSA's "proxy". *Functus officio* does not apply because the LSA has not made a final order.

(ii) General principles

42. Estoppel, *res judicata*, and *functus officio* are similar concepts that serve the principles of finality and fairness by preventing relitigation. To illustrate the point, the Alberta Court of Appeal referred to "estoppel by *res judicata*" in *420093 BC Ltd v Bank of Montreal* (1995), 174 AR 214, 1995 CanLII 6246 (CA) [*420093 BC Ltd*] (cited to CanLII).

a) Estoppel / res judicata

43. Estoppel means that a dispute that has been judged with finality is not subject to relitigation. It applies both to the cause of action ("cause of action estoppel") and relitigation of the constituent issues or material facts necessarily embraced therein ("issue estoppel"): *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at paragraph 20 [*Danyluk*].

44. Cause of action estoppel includes the requirement that "the judgement actually operates as a comprehensive declaration of the rights of all parties in respect of the matters in issue": *420093 BC Ltd.* The preconditions to the operation of issue estoppel are: (1) that the same question has been decided; (2) that the judicial decision which is said

to create the estoppel was final; and (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies: *Danyluk* at paragraph 25.

45. At the hearing of this application, neither counsel nor the Committee had located authority defining what a "privy" is for the purpose of issue estoppel. There is some discussion in *420093 BC Ltd*. It is a fact-specific inquiry, and there must be a "sufficient degree of identification" between the two to make it just to hold that the first judgment precludes the second proceeding, despite the parties not being identical. Even a relationship such as principle and agent may be insufficient to establish estoppel.

46. In the context of judicial or quasi-judicial administrative tribunals, "the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided": *Danyluk* at paragraph 21; *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at paragraph 27. "These rules call for a judicial balance between finality, fairness, efficiency and authority of judicial decisions": *Toronto (City) v CUPE Local 79*, 2003 SCC 63 at paragraph 15 (*Toronto (City)*).

47. Even if the preconditions for estoppel are met, the doctrine should not be applied mechanically to work an injustice: *Danyluk* at paragraphs 1, 67.

b) Res judicata or "Estoppel by *res judicata*"

48. *"Res judicata"* is essentially issue estoppel. It means that the issue has already been decided and is not to be relitigated, subject to exceptions. This Committee is obviously not an appellate Court but the words of Charon J.A. (as she then was) apply – one cannot "simply keep coming back to the court of appeal any time a new or different ground of appeal was formulated, and this even in the face of a decision of the Supreme Court of Canada in relation to the previous appeal": *R v EFH* (1997), 33 OR (3d) 202, 1997 CanLII 418 (CA).

c) Functus officio

49. *"Functus officio"* means that, subject to exceptions, a case cannot be reopened because it has ended and the Court has exhausted its purpose: *R v Riddle*, 1977 ALTASCAD 119. A Court can only rarely reconsider its own decision, for example as authorized by statute: *Paper Machinery Ltd v JO Ross Engineering Corp*, [1934] SCR 186 at 188, 1934 CanLII 1.

(iii) Estoppel / res judicata do not apply here

50. The LSM Discipline Committee did not decide the same question this Committee is asked to decide. All parties in the LSM proceedings agreed that the LSM does not have jurisdiction to suspend or disbar LSA lawyers, and the LSM Discipline Committee did not express an opinion beyond the fitness of the joint submission. The question of suspension or disbarment never arose in Manitoba.

51. The LSM is not the LSA's "privy" in this circumstance. Their authority is similar but not the same regarding visiting lawyers. The Committee recognizes that both law societies are signatories to the NMA, but we do not think that two different entities which do not share the same powers are properly considered to be "privies" of one another. There is not a sufficient degree of identification between the two.

52. Even if we had found that the preconditions for issue estoppel were satisfied, we would exercise our discretion in favour of the LSA. Whether a lawyer should face disbarment (or suspension) is a particularly important question that deserves to be answered. As the US Seventh Court of Circuit Court of Appeals opined in *In re Echeles*, 430 F 2d 347 (7th Cir 1970):

> … it would be well to note that disbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, *sui generis*, and result from the inherent power of courts over their officers. Such proceedings are not lawsuits between parties litigant but rather are in the nature of an inquest or inquiry into the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the Court to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. Thus the real question at issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice a profession imbued with public trust.
>
> [citations omitted]

(iv) Functus officio does not apply here.

53. As the LSA points out, the principle of *functus officio* does not apply because there has not been a decision of an LSA hearing committee. Similarly, we find that so long as the issues of in Alberta have not been resolved, the issues are not final decision such that *res judicata* would apply.

54. In conclusion, the Committee declines to direct a discontinuance based on estoppel, *res judicata*, or *functus officio.*

The LSA proceedings are not an abuse of process.

(i) The parties' position

55. The Lawyers argue that the LSA are engaged in an abuse of process by attempting to engage in a form of "double discipline" after the LSM has already disciplined them (we have already addressed estoppel, *functus officio*, and *res judicata* in these reasons).

56. The LSA argued during submissions that is neither "double discipline" nor an abuse of process. Rather, it is the LSA's attempt to recognize Manitoba's findings regarding the Lawyers' conduct.

(ii) General principles

57. The abuse of process by relitigation doctrine covers situations that are not covered by estoppel: *Anglin v Relser*, 2024 ABCA 113 at paragraph 182, leave to appeal to SCC ref'd 41298 (14 November 2024). The fact that there are two proceedings that involve the same or similar parties or legal issues is insufficient, without more, to establish an abuse of process; the analysis focuses on whether allowing the litigation to proceed would violate principles such as judicial economy, consistency, finality, and the integrity of the administration of justice: *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 at paras 38-40.

58. An "abuse of process" is a proceeding that is: (a) oppressive or vexatious; and (b) violates the fundamental principles of justice underlying the community's sense of fair play and decency. It is a fact-driven inquiry focused on the integrity of the adjudicative process. The discretionary factors that prevent issue estoppel from operating unjustly or unfairly also apply to the doctrine of abuse of process. The categories are not closed. A collateral attack on previous proceedings could be an example: *Toronto (City).* A prosecution based on oblique or improper motives would be another: *R v Cook*, [1997] 1 SCR 1113, 1997 CanLII 392; *R v Nixon*, 2011 SCC 34.

59. The Supreme Court of Canada has held that, in the context of assessing delay, administrative tribunals have the power to determine whether an abuse of their process has occurred: *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 38. The same Court has also held that the doctrine of abuse of process is not limited to issues of delay: *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paragraph 115.

(iii) There is no abuse of process here

60. The idea of "double discipline" does not apply here. The authorities provided, in the context of employment law, involve employers (mainly in collective bargaining

environments) who discipline their employees with something like a suspension and then purport to add more discipline like termination, without the employee engaging in further bad behaviour after the first discipline. The Lawyers draw the analogy by pointing out that that the LSA: (a) told the complainant that it was not pursuing the matter in Alberta but that the LSM would address it (Cc'd to the Lawyers); (b) changed its mind and decided that it would wait for the LSM decision; and then (c) began this process after the Lawyers were banned from practicing law in Manitoba.

61. The Lawyers' analogy fails. First, because the Lawyers conceded during argument that they suffered no prejudice as a result of N.M.'s letter of August 4, 2021. Second, because this Committee has found that the LSA and the LSM are different entities possessing different kinds of authority addressing different questions. The scheme of the NMA necessarily implies the possibility of discipline in multiple jurisdictions. And third, there is no duplication because the LSM could not address the important question that the LSA now seeks to address.

62. There is no evidence that the LSA's actions imply an oblique or improper motive behind these proceedings. We note that at the time N.M. wrote his letter, the LSA essentially had the complaint. They could not have known details such as, for example, the Lawyers' email correspondence regarding the hiring of the PI or the apparent motives for doing so, or that the Lawyers would ultimately admit that they engaged in conduct deserving of sanction. Those details came later.

63. This is not a collateral attack on the LSM Order. As Mr. Seidenz argued, the LSA is attempting to recognize the LSM Order. The dismissal of this application does not dictate a particular outcome of the sanction hearing; the Committee will make its decision after the Lawyers are afforded due process there.

64. *Achtem v Law Society of Alberta*, 1981 ABCA 145, does not assist the Lawyers. In that case, the LSA suspended the lawyer for conduct unbecoming a member. After the same conduct resulted in a criminal conviction and penitentiary sentence, the LSA invoked section 73(1) (similar to the current section 84) of the *Act* to disbar the lawyer without notice to him. On the lawyer's appeal, the majority (*per* Stevens J.A.) opined that it was the statute that allowed the LSA to seek further discipline but the LSA breached its duty of fairness when it disbarred without notice. The majority expressed no difficulty with the concept that the same body could discipline twice. Kerans J.A., concurring in the result, opined that section 73(1) did not create authority to discipline twice – the lawyer did no extra harm by being convicted. Kerans J.A.'s concerns *are not* the *ratio* of the decision, and counsel did not point the Committee to any decision adopting his reasons.

65. In conclusion, the Committee declines to direct a discontinuance based on the doctrine of abuse of process.

Conclusion

66. Adopting the Lawyers' interpretation of the NMA and Rules would result in the untenable situation that the LSA is unable to remove from its rolls a lawyer who is unsuitable for practice. That cannot be what the drafters of the NMA and Rules intended, or what the government expects when it affords lawyers the privilege of self regulation. The Lawyers have failed to show that the common-law doctrines of estoppel, *res judicata*, *functus officio*, or abuse of process apply in this situation.

67. The application for a discontinuance is dismissed. This matter will proceed to hearing as scheduled for May 28, 2025.

68. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated March 11, 2025.

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Troy Couillard - Chair

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Cheryl McLaughlin

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Darlene Scott, KC