

**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**

December 5, 2024

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT – SANCTION PHASE**

**Overview**

1. Jonathan Denis is a litigation and government relations lawyer in Calgary, Alberta. He practiced law from 2001 until he was elected as an MLA in 2008. He resumed his law practice in 2015.
2. After a hearing on February 6 and 7, 2024 and April 18, 2024, and for the reasons set out in its decision, *Law Society of Alberta v. Denis*, 2024 ABLS 19 dated September 6, 2024 (Merits Decision), the Hearing Committee (Committee) found Mr. Denis guilty of conduct deserving of sanction in the following citations:
  - 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); and
  - 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, CK, and such conduct is deserving of sanction (Citation 2).
3. Citation 1 arose from Mr. Denis's retention by the complainant, Mr. L, in August 2020 about a motor vehicle accident involving his daughter SL, who was driving his vehicle, and her friend RM. The parties met with Mr. Denis to discuss the accident and contingency fee agreements were signed by SL and by BM, RM's litigation representative. In late October 2021 Mr. Denis ceased acting for SL. He continued to act

for RM and in April 2021 he filed a personal injury action on behalf of RM, naming, among others, SL and Mr. L as defendants.

4. In November 2021 Mr. Denis was retained by CK to prepare and send a cease and desist letter to CM following the end of their extra-marital affair. The letter, which was sent to CM on November 13, 2021, alleged she was engaging in inappropriate behaviour and demanded that she cease the behaviour failing which a restraining order would be sought. The letter also referred to CM's employment as a peace officer and stated "[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 Citation 2.
5. A hearing on sanction was held on December 5, 2024 at which time a joint submission on sanction was presented to the Committee for a reprimand and a fine. The parties disagreed on the payment of costs.
6. The Committee accepted the joint submission on sanction at the hearing and, in accordance with section 72 of the *Legal Profession Act (Act)*, ordered a reprimand and a fine of \$5,000.00 (\$2,500.00 for each of the two citations) to be paid by February 28, 2025.
7. The Committee reserved its decision on costs. After reviewing the evidence and exhibits, and hearing the arguments on behalf of the LSA and Mr. Denis, for the reasons set out below, the Committee orders that Mr. Denis pay costs of \$15,000.00 by April 30, 2025.

### **Preliminary Matters**

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

### **Submissions on Sanction**

9. The facts related to the sanctionable conduct are set out in the Merits Decision. This phase of the hearing is to consider the appropriate sanction for that conduct.

10. The parties presented a joint submission on sanction comprised of a reprimand and fine of \$5,000.00 (\$2,500.00 for each citation). Several cases<sup>1</sup> were referred by LSA Counsel in support of the joint submission. No additional cases on sanction were provided by counsel for Mr. Denis and the LSA's submissions regarding the reasonableness of the joint agreement on sanction were not disputed.
11. The parties disagreed on the payment of costs.
12. LSA provided an Estimated Statement of Costs of \$26,559.75. The costs are primarily comprised of counsel time of \$21,813.75 (172.2 hours at \$125 per hour) with the remainder reflecting investigation costs, court reporter costs and per diem hearing expenses. The LSA argued that full costs should be ordered.
13. Counsel for Mr. Denis argued no costs are warranted in these circumstances.

## **Analysis and Decision on Sanction**

### ***Reprimand and Fine***

14. The Committee is tasked with determining the appropriate sanction and is guided by section 72 of the *Act* and paragraph 198 of the Pre-Hearing and Hearing Guideline (Guideline) as well as relevant case law.
15. Pursuant to section 72 of the *Act* a hearing committee shall order a disbarment or a suspension or a reprimand. In addition, a hearing committee can also order conditions and restrictions on a member's practice, practice review and a penalty. Paragraph 198 of the Guideline states that: "the prime determinant of the appropriate sanction is the seriousness of the misconduct." This determination goes to both the nature of the sanction as well as consideration of imposition of a penalty and payment of costs. Pursuant to section 198, seriousness may be determined with a view to several factors, including the following which apply to this case:
  - a. the degree to which the misconduct constitutes a risk to the public;
  - b. the degree to which the misconduct constitutes a risk to the reputation of the legal profession;

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<sup>1</sup> *Law Society of Alberta v Suberlak*, 2020 ABLs 34; *Law Society of Alberta v Schwartz*, 2015 ABLs 4; *Law Society of Alberta v Johnston*, 2021 ABLs 30; *Law Society of Alberta v Gee*, 2021 ABLs 32; *Law Society of Alberta v Makuch*, 2020 ABLs 20; *Law Society of Alberta v Kaczowski*, 2016 ABLs 36; *Law Society of Alberta v Mary Jo Rothecker*, 2007 LSA 20; *Law Society of Alberta v Katherine Kubica*, 2007 LSA 13; and *Law Society of Saskatchewan v Simaluk*, 2024 SKLSS 3.

- f. the harm caused by the misconduct;
  - g. the potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would likely have resulted from the lawyer's misconduct;
  - h. the number of incidents involved; and
  - i. the length of time involved.
16. While the Committee is not bound by a joint submission on sanction we are required to give deference to it. The law is well established and requires a hearing committee to accept the joint submission unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest.
17. Considering the factors set out in paragraph 198 of the Guideline, a reprimand is an appropriate sanction. Mr. Denis's conduct did not involve significantly more serious conduct such as misappropriation, breach of trust or ungovernability which may merit the harsher sanctions of disbarment or suspension. Moreover, the fines are also appropriate and reflect the seriousness of Mr. Denis's conduct, in line with what the Committee stated in its Merits Decision, at paragraph 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.

18. Similarly, the Committee found that Mr. Denis's threat to use a regulatory mechanism to leverage his client's interest undermines the integrity of the legal profession and breach of the rule against it is a marked departure from the conduct expected of a lawyer. His conduct in both situations presented a serious potential risk to the public and public perception of the profession as well as serious potential harm to his clients, although actual serious harm was avoided.
19. The Committee is of the view that the jointly proposed sanction is in line with the authorities provided and accepted that the joint submission for a reprimand with fines of \$2,500.00 for each of the proven citations is reasonable, consistent with sanctions in similar cases, and satisfies the public interest in protecting the public and the integrity of the profession.
20. The Committee delivered the following reprimand to Mr. Denis at the hearing:

Mr. Denis, the Law Society is a self-regulated profession and, as your regulator, is guided by the need to both protect the public interest and to

maintain and protect the reputation of the legal profession. Your conduct in these matters has, in one instance, undermined the trust of people who believed you were their lawyer, and as a consequence, the trust of the public in lawyers in general.

In the other instance, you used your position to threaten proceedings against a member of the public in an effort to benefit your client. Both situations raise serious ethical concerns and are the types of conduct which tarnish the reputation and public trust in the legal profession.

As an experienced lawyer, you were expected to adhere to the high standards of conduct required by our Code of Conduct, and a clear duty set out therein not to act in a conflict of interest or threaten disciplinary proceedings to achieve a benefit for your client. This conduct reflects very poorly on you and the profession at large. Misapprehension of your duties under the Code of Conduct is not a defence as you have suggested but rather rings the alarm bells.

The Hearing Committee notes that you have no prior disciplinary record, and this is a mitigating factor. However, while your clients and other parties involved may not have suffered any serious consequences, you persisted in your denial of any wrongdoing or conduct deserving of sanction, resulting in hearing costs, time, and resources, as well as inconvenience and stress to witnesses.

The Hearing Committee expects that you will do better to abide by the Code of Conduct in the future. We sincerely hope that you have learned from this and will apply the lessons learned such that this will not only be your first but your last disciplinary involvement with the Law Society. Thank you and good luck with your practice in the future.

## Costs

21. Whether and to what extent investigation and hearing costs should be payable in disciplinary matters governed by the *Act* remains somewhat unsettled since the decision of *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 226. In the context of proceedings under the *Health Professions Act*, RSA 2000, C. H-7, the Court in *Jinnah* held that the governing profession should “bear the costs associated with the privilege and responsibility of self-regulation unless a member has committed serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators, or has engaged in hearing misconduct” (paragraph 21).
22. A thorough summary of the status of the law on this issue is set out in the recent decision of *Law Society of Alberta v. Baig*, 2024 ABL 23 (paragraphs 72 – 81). As

noted by the hearing committee in *Baig* “[t]he Court of Appeal of Alberta approach to costs in discipline proceedings involving professionals seems to have come full circle through the decisions of a number of panels of the Court over the past three years” and has seemingly reverted to the test set out in *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253.

23. The Court in *K.C.* discusses these factors in paragraph 94 as follows:

The fact that the **Act** and **Regulation** permit the recovery of all hearing and appeal costs does not mean that they must be ordered in every case. Costs are discretionary, with the discretion to be exercised judicially ... Costs awarded on a full indemnity basis should not be the default, nor, in the case of mixed success, should costs be a straight mathematical calculation based on the number of convictions divided by the number of charges. In addition to success or failure, a discipline committee awarding costs must consider such factors as the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts. Costs are not a penalty, and should not be awarded on that basis. When the magnitude of a costs award delivers a crushing financial blow, it deserves careful scrutiny... If costs awarded routinely are exorbitant they may deny an investigated person a fair chance to dispute allegations of professional misconduct...

24. The Alberta Court of Appeal in *Beaver v. Law Society of Alberta*, 2024 ABCA 254, declined to rule on whether *Jinnah* applied to disciplinary proceedings against lawyers, however upheld what it describes as a “reasonable” costs award. In that decision, the Court further notes that leave has been granted to hear arguments that *Jinnah* should be reconsidered in *Charkhandeh v. College of Dental Surgeons of Alberta*, 2024 ABCA 239.
25. The *K.C.* test has more recently been applied in *Baig* and in *Law Society of Alberta v. Galbraith*, 2024 ABL 13. In *Baig*, the hearing committee considered both the seriousness of the conduct (fraud related citations) as well as the admission of guilt which reduced the length of the and awarded costs of \$20,000.00 (approximately 70% of the estimated costs).
26. In *Galbraith*, the hearing committee noted the seriousness of the conduct at paragraph 101(b) as follows:

Mr. Galbraith’s failure to serve his client conscientiously and diligently and his failure to respond to communications from another lawyer represent serious misconduct, albeit at the lower end of the range. In *Jinnah*, in describing what would constitute serious unprofessional conduct, the Committee included the performance of services in a manner that is a marked departure from the ordinary standard of care[2]. The Committee finds that Mr. Galbraith’s conduct clearly demonstrates a marked departure from the ordinary standard of care.

27. Further, in *Galbraith*, the hearing committee also noted that the member had been found guilty on all citations and that while he had admitted some facts which were found to be misconduct, he did not admit conduct deserving of sanction. The hearing committee also commented on the reasonableness of the estimated costs and the inadequacy of the counsel fee rate of \$125.00 per hour and awarded 75% of the costs.
28. LSA counsel argued that *Jinnah* does not apply to the legal profession but even if it does, an award of costs is warranted given the seriousness of Mr. Denis's conduct, which counsel noted is described as a marked departure from the ordinary standard of care in the Merits Decision and referenced *Galbraith* as an analogous case.
29. Conversely, counsel for Mr. Denis argued that *Jinnah* is the governing law and that the factors for imposition of costs are not met in this case as there has not been any serious misconduct, Mr. Denis is not a serial offender, he has not failed to cooperate with investigators nor was there any hearing misconduct.
30. The Committee has determined that it is not necessary to weigh in whether *Jinnah* applies to the lawyers and agrees with the hearing committee in *Galbraith* that the *K.C.* factors apply.
31. Applying the *K.C.* factors to this case, the Committee notes the following:
  - 1) Mr. Denis has served the public both professionally and as a public servant and has no disciplinary record;
  - 2) Mr. Denis was found guilty on both citations which arose from separate retainers and complaints involving different parties;
  - 3) Both Citations and findings of guilt related to serious and direct violations of the applicable Rules of the Rules of the LSA (Rules) which the Committee found were marked departures from the ordinary standard of care and violations which tend to taint public perception of the profession and put the public interest at risk (as opposed to mere errors of judgment);
  - 4) All facts and both Citations were vigorously defended necessitating a full oral hearing which included five witnesses, two of which provided negligibly relevant evidence which lengthened the duration of the proceedings;
  - 5) Although Mr. Denis did admit, during the hearing, to a "technical" breach of the conflicts Rules, he completely misapprehended the clear requirements of the Rules, failed to admit that the breach was deserving of sanction, and no hearing time was saved as a result;

- 6) Mr. Denis made an unnecessary and unsuccessful application to reopen the hearing to adduce new evidence;
  - 7) Mr. Denis agreed to a partial joint submission on sanction which likely reduced the duration of the sanction hearing by about a half day; and
  - 8) The costs consist primarily of counsel time which appears very reasonable given the duration of the hearing, the need for written arguments on the merits and the application to reopen the hearing.
32. The Committee was urged by counsel for Mr. Denis to consider that Mr. Denis did not receive any fees and that no harm resulted to any parties in either matter (this is disputed by LSA counsel). The Committee is not convinced that the fact Mr. Denis did not get paid is relevant to this determination. Further, as noted in paragraph 198 of the Guideline, the consideration is not actual harm, but “the potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would likely have resulted from the lawyer’s misconduct.” That there may not have been actual or any harm does not detract from the seriousness of the impugned conduct.
33. Based on the foregoing, the Committee has determined an award of costs is appropriate in this case and orders Mr. Denis to pay costs of \$15,000.00.

### **Concluding Matters**

34. The Committee accepted the joint submission on sanction and made the following order at the oral hearing on December 5, 2024:
- 1) The appropriate sanction is a reprimand and costs of \$2,500.00 for each of the two citations;
  - 2) The total fines of \$5,000.00 are payable by February 28, 2025.
35. The Committee orders that costs are payable by Mr. Denis in the amount of \$15,000.00 to be paid by April 30, 2025.
36. Notice to the Profession or referral to the Attorney General of Alberta are not required.
37. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Denis will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client

privilege (Rule 98(3)).

Dated March 7, 2025.

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Corinne Petersen, KC

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Ronald Sorokin, KC

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Ike Zacharopoulos