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 BRIAN GOLDSWORTHY
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee
Scott Matheson – Chair/Bencher

Appearances
Henrietta Falasinnu – Counsel for the Law Society of Alberta
Brian Goldsworthy – Self-represented

Hearing Date
June 26, 2025

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION

1. Joint submissions on sanction in discipline proceedings are often a package deal, including both the penalty and an agreed-upon award of costs.

2. The bar for rejection of a joint submission is high: *R v Anthony Cook*, 2016 SCC 43, arising in the criminal context and often applied in this one. But the application of that test to costs is not straightforward. Costs are not awarded in criminal cases. In the other venues in which costs are granted, they are classically discretionary. The Court of Appeal of Alberta recently reined-in costs in professional discipline: *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258. These two decisions intersect here, because the costs component of the joint submission raises the only real question: does the public interest deference owed to a joint submission extend, essentially unchanged, to the costs figure in a professional discipline matter?

3. While the factors set out in *Anthony-Cook* do not neatly fit the assessment of a disciplinary costs award, they can be adapted to help guide a decisionmaker's review. Where costs are part of a global, consensual resolution, decisionmakers should scrutinize them carefully, applying the principles in *Charkhandeh*, but hesitate to meddle with the components of a duly hashed-out bargain.

Background

4. A panel of the Conduct Committee issued three citations against Mr. Goldsworthy:

    1) It is alleged that Brian Goldsworthy failed to provide competent, conscientious, and diligent services to his client and that such conduct is deserving of sanction.

    2) It is alleged that Brian Goldsworthy failed to provide reasonable notice of his withdrawal as counsel for his client and that such conduct is deserving of sanction.

    3) It is alleged that Brian Goldsworthy failed to respond to communications from the Law Society promptly and completely and that such conduct is deserving of sanction.

5. Mr. Goldsworthy signed a Statement of Admitted Facts and Admission of Guilt (Statement). It reveals the citations arose from his representation of a client, DM, in a matter involving a restraining order. Mr. Goldsworthy was at the time leaving his former firm and starting out on his own. He corresponded with DM about whether she would come with him or stay at his old firm. Despite repeated, increasingly worried, communications from DM, he often ignored her, failed to attend a scheduled court date, and did not return her physical file. The missed court appearance led to her claim and counterclaim being struck, with costs against her. When he eventually responded to her it was unduly aggressive and misleading, by way of a “With Prejudice” letter which elided the court date he missed and mischaracterized his previous conversations with her. Although he belatedly ended his professional relationship with her, he did not file a notice of withdrawal or notify opposing counsel. When the Law Society of Alberta (LSA) became involved, he put off for months providing a substantive response, and avoided having to be interviewed.

6. The Conduct Committee found the Statement acceptable. Under section 60(4) of the *Legal Profession Act* (*Act*), it is therefore deemed to be a finding of this Hearing Committee (Committee) that Mr. Goldsworthy’s conduct is deserving of sanction.

The Single Bencher Hearing

7. On June 26, 2025, a hearing was convened into the appropriate sanction. The LSA submitted twelve exhibits, which were marked by agreement, and a book of authorities, which I have reviewed. No objection was made to the Committee’s jurisdiction or my appointment as a Single Bencher on the Committee. Both parties were given the opportunity to make submissions. No application was brought for the hearing to be held in private, so it went ahead in public, by Zoom.

8. I was told at the outset that the parties had reached a joint submission: a reprimand, a $5,000.00 fine, and payment of the LSA's estimated $12,831.00 in costs, with a three-month deadline for receipt of both. Mr. Goldsworthy took the opportunity to express remorse and apologize to DM. There was a productive discussion on the record about returning her physical file. I was satisfied Mr. Goldsworthy has accepted responsibility for his conduct.

9. After reviewing all of the evidence and exhibits, and hearing the submissions of the LSA and Mr. Goldsworthy, I determined the joint submission of a reprimand was doubtless warranted and rather than convene a separate session I delivered an oral reprimand admonishing him, which is included as an appendix to these reasons. I reserved my decision as to the joint submission as a whole.

Submissions on Sanction

10. Given the joint nature of the submission, remarks from either party were limited. Counsel for the LSA stated the sanction is reasonable and no grounds exist under *Anthony-Cook* to justify its rejection. Mr. Goldsworthy did not argue against the joint submission.

11. I alerted counsel I had questions about the full-indemnity costs award of $12,831.00. In response the LSA referred to the authorities annexed, fairly acknowledging none of them address a costs award in the circumstances of a joint submission. Mr. Goldsworthy stated he did not understand the Estimated Bill of Costs to have been negotiable.

12. There was some play in the joints of the submission. Mr. Goldsworthy said the LSA would reduce the Bill of Costs if the hearing lasted less than the three hours stated in the Bill. (It ended up taking 40 minutes). LSA counsel acknowledged this was her intention.

13. Three and a half weeks after the hearing, while my decision was on reserve, the Court of Appeal released its reasons for judgment in *Charkhandeh*. Given the importance of the case, I invited from the LSA and Mr. Goldsworthy any submissions on the effect of the decision on this proceeding. Mr. Goldsworthy made none. The LSA "proposes, in these very unique circumstances, to offer some further alternative submissions on a different potential costs number for the panel's consideration if they determine they need to vary the costs in this situation." The LSA's submissions conclude by saying: "in the alternative to the original joint submission, if the Panel views that an alternative ought to be selected, we respectfully submit that the Revised Costs in the total sum of $8,224.13 being proposed are not disproportionate or crushing in this matter and request that it should be granted." The LSA's revised Statement of Costs reduces the investigator time by half and removes the court reporter and per diem. (The LSA asserts that the last two charges are a "background or overhead expense" as described in *Charkhandeh*).

Decision on Sanction

The Test in R. v. Anthony-Cook

14. In *Anthony-Cook*, a unanimous seven-justice panel of the Supreme Court considered a menu of options for the test to reject a joint submission, and chose the most stringent: does the sanction bring the administration of justice into disrepute, or is it otherwise contrary to the public interest? While a joint submission is "not sacrosanct" (para. 1), and I am not bound to accept it, the bar for rejection is high. In weighing whether the test is met, I must ask:

    a. Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the LSA's discipline process?

    b. Would the joint submission cause an informed and reasonable public to lose confidence in the institution of the LSA as a regulator?

    c. Is the joint submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the discipline process had broken down?

15. *Anthony-Cook* was a criminal decision, not a regulatory one. Criminal and professional discipline proceedings are "conceptually and jurisprudentially distinct", and one "must not uncritically simply import criminal law concepts into the law concerning professional discipline": James T. Casey, *Regulation of Professions in Canada* (online), s. 14.5. The underlying sentencing objectives are different. While "some analogies can be made between criminal sentencing and imposing sanctions in professional disciplinary cases, different objectives are at play. The primary purpose of sanctions in professional disciplinary cases is protection of the public. Denunciation, retribution, and punishment are not primary objectives of the sanctioning process, except to the extent that they serve the objective of protection of the public": *Charkhandeh*, para. 93. Nonetheless, Casey suggests the "public policy considerations that convinced the Supreme Court to adopt the most stringent public interest test [in *Anthony-Cook*] apply also to the realm of professional discipline": s. 14.5.

16. Dozens of previous hearing committees of the LSA have cited *Anthony-Cook* in assessing joint submissions. Other Alberta regulators likewise depend on *Anthony-Cook*: e.g. *Chu (Re)*, 2025 ABRECA 6 (realtors); *Lee (Re)*, 2024 CanLII 84898 (AB CPSDC) (physicians); *College of Physiotherapists of Alberta v Moiz*, 2024 ABCPT 1 (physiotherapists); *Re Aldridge*, 20-004-FH, (2022), (engineers). No Alberta court has, to

my knowledge, confirmed the case applies to LSA proceedings, but Ontario's courts have found *Anthony-Cook* controls their professional discipline generally, see *Bradley v. Ontario College of Teachers* (Div. Ct.) 2021 ONSC 2303. *Bradley* has been cited approvingly by other Alberta regulators, but no courts.

17. Many of the underlying rationales for deference to joint submissions are the same whether the charge is criminal or disciplinary. For the member, the outcome is likely more lenient; early pleading reduces stress and legal fees; and "for the remorseful, [joint submission] provides an opportunity to begin to make amends while affording the comfort of certainty": *R v Naslund,* 2022 ABCA 6, para. 52. Members would not readily give up their rights to hearing on the merits without some assurance the decisionmaker will, in most instances, honour the agreement: ibid. For the prosecuting authority (here the regulator), near-certain acceptance of joint submissions also offers advantages: "it means there is less risk an appropriate sentence will be undercut; there is a guarantee of conviction despite any flaws in the case; information beneficial to other investigations may remain secure; victims and witnesses are spared trial; and victims may obtain some solace": ibid, para. 53.

18. Plea bargains are encouraged on efficiency grounds because they reduce hearing costs, uncertainty, and inconvenience for the member, witnesses, complainants, and other participants. Without pleas, the criminal justice system "would be brought to its knees, and eventually collapse under its own weight": *Anthony Cook*, para. 40. Joint submissions "in the professional discipline context [likewise] enable many complaints of unprofessional conduct to be disposed of efficiently, effectively, and fairly": Casey, s. 14.5. (The efficiency rationale is contested. See the academic sources cited below).

19. Joint submissions in both criminal and disciplinary proceedings reflect negotiated outcomes. Overturning them undermines their reliability, disincentivizing resolution. They "are the product of give and take from experienced counsel who have a full picture of the case and can weigh the risks of litigation": *Law Society of Alberta v Woo*, 2021 ABLS 31. Their terms, including costs, are "part of the quid pro quo of the negotiation": ibid. (Recent scholarship shows the give and take process is more haphazard, and less principled, than the judicial authorities suggest: see Jaggi, infra, pgs.155-161).

20. Despite the similarities, there are reasons why *more* deference should be paid to a joint submission in professional proceedings than in criminal law:

    a) In professional discipline, stare decisis is weak. Tribunals are generally not bound by their previous decisions: Casey, s. 14.5. That includes the *LSA Pre-Hearing and Hearing Guideline*, s. 206; see, e.g., *Law Society of Alberta v Billing*, 2024 ABLS 1, para. 19; *Law Society of Alberta v Juneja*, 2024 ABLS 2, para. 38. Compare *R. v. Sullivan*, 2022 SCC 19. When parties cannot confidently rely on earlier cases to forecast a hearing committee's view on sanction, joint submission is the main way to lock in a known result.

b) Inequality in bargaining power between the parties is diminished in discipline matters. The modal professional facing discipline is more fortunate, less vulnerable, than a typical criminal accused from a class, health, and finance perspective.

c) LSA sanction outcomes are usually published online. (This is not true for every regulator). In criminal law, it is rare for a joint submission to generate a reported decision. The public exposure of sanction outcomes in the LSA tempers the opacity objections raised in criminal proceedings.

21. On the other hand, many motives for deference to negotiated resolution in the criminal sphere are weaker in the professional context, justifying greater scrutiny:

a) Those at risk of being imprisoned must be able to depend on the offers made by the prosecution. That reliance is lessened in professional discipline because the liberty of the member is not imperiled. Although disbarment has been referred to as "economic death" (Charkhandeh, para. 90), and suspension, fines, and costs have significant effects on the member, they are not the same as being jailed.

b) In discipline proceedings, regulators' counsel are subject to the ethical obligations governing all lawyers, but not the unique duties to the administration of justice to which Crown prosecutors are bound. Such duties, in theory, restrict Crown prosecutors' leverage in charging and plea bargaining: see Paciocco, *infra*, and Manikis & Grbac, *infra*. These guardrails do not exist for regulators' counsel in negotiating joint submissions, or at least not to the same degree.

c) Disclosure standards are laxer in professional discipline than in criminal law, putting members at a disadvantage in negotiations. See, for example, the LSA's *Pre-Hearing Disclosure Protocol*'s exceptions, para. 17.

d) Independent self-regulation carries the risk of a perceived protect-our-own mentality which would not be in the public interest. That augurs in favour of greater attention to joint submissions which appear to be too lenient.

e) The two systems are funded differently. The cost of prosecuting a crime comes from the broad public purse, and likewise the savings of avoiding a trial is diffuse, accruing to the taxpayer writ large. Professional discipline is funded by a narrower group, the membership. They bear the cost of prosecution and the savings of avoiding a hearing if a joint submission is reached. In short there is less financial incentive on a Crown to reach a plea bargain than on discipline counsel. These pressures, though small, could lead to too-lenient deals in discipline.

f) Victims have, in recent years, been granted more rights of participation in criminal processes, see the *Canadian Victims Bill of Rights* (S.C. 2015, c. 13, s. 2), esp. s. 14. Complainants' involvement in disciplinary proceedings is limited and they have less ability to speak to a joint submission.

g) Delay rules are anemic in professional discipline: compare *R. v. Jordan*, 2016 SCC 27, and *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29. Without a hard delay clock, regulators' counsel can stretch-out bargaining and extract steep trial penalty discounts, while the member labours under the stress of a charge. When time is scarce, as it is in criminal proceedings, upsetting an agreed-upon deal has high costs; when time is slack, in professional discipline, that cost is low.

22. In both criminal and disciplinary cases the prevailing hands-off approach to joint submissions carries risks which must be guarded against. Unchecked regulator advantage generates coercive trial penalties for members who dare to fight their citations. A black box system with only a bare rubber stamp by a decisionmaker, with little ability to vary a pleaded-to penalty, provides meagre oversight for a fundamentally imbalanced negotiation. The marked increase in the quantum of costs in our proceedings in the last decade was, until *Charkhandeh*, a worrisome hammer in plea bargaining that makes it difficult for any member to risk raising a meritorious defence and hazard a huge costs award if they lose.

23. The American experience with a light touch to joint submissions in criminal matters has led to increasing skepticism of the practice as unfair, imbalanced, and opaque, given the paucity of trials. See, e.g., Ram Subramanian et al, *In the Shadows: A Review of the Research on Plea Bargaining* (New York: Vera Institute of Justice, 2020); Stephanos Bibas, now a judge on the U.S. Court of Appeals for the Third Circuit, "Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops" (2016) 57:4 *Wm & Mary L Rev* 1055, and "Plea Bargaining Outside the Shadow of Trial" (2004) *Harvard Law Review* 117. Canadian authorities have recently begun expressing the same concerns, see, e.g., Palma Paciocco "Seeking Justice by Plea: The Prosecutor's Ethical Obligations During Plea Bargaining" (2017) 63:1 *McGill LJ* 45; Marie Manikis & Peter Grbac, "Bargaining for Justice: The Road Towards Prosecutorial Accountability in the Plea Bargaining Process" (2017) 40:3 Man LJ 85; Zina Lu Burke Scott, 'An Inconvenient Bargain: The Ethical Implications of Plea Bargaining in Canada" (2018) 81:1 *Sask L Rev* 53; Sharm Jaggi, "Placing Expediency before Principle: An Empirical Analysis of the Joint Sentencing Practices of Canadian Crown Prosecutors and Defence Lawyers," *U.B.C. Law Review* 58, no. 1 (May 2025).

24. Which explains why, when assessing a joint submission, it is tempting to tinker. A decisionmaker may think "this is not what I would have awarded", "this is a bad deal", or even "this is not fair to the member." Decisionmakers see a wide swath of sanctions and it is natural for them to be worried when a joint submission is much harsher, or much

more lenient, than other cases they have been exposed to. But the test in *Anthony-Cook* is demanding, and unless and until the Supreme Court decides to change it, these concerns do not justify rejection or modification of a joint submission.

The Proposed Joint Submission

25. The first element of this joint submission is a reprimand. Reprimands are an important corrective tool and are commonly imposed for many types of offences large and small, often in conjunction with other remedies. A reprimand "primarily serves to confirm that the conduct in question is unprofessional, and [acts] as a specific deterrent to the professional": *Charkhandeh*, para. 87.

26. The second ingredient is a $5,000.00 fine. Fines "are almost entirely punitive. They would punish the professional, and act as a specific or general deterrent. Their impact on the protection of the public or the reputation of the profession is more indirect": *Charkhandeh*, para. 88. The statutory maximum fine is $10,000.00 "for each act or matter regarding the member's conduct in respect of which the Committee has made a finding of guilt": s. 72(2)(b) of the *Act*.

27. $5,000.00 is on the high end of the range for these facts, which involve a single complaint by one client in one matter. Mr. Goldsworthy has no disciplinary record and pleaded early, both of which are mitigating. The fine is not out of line with other cases for parity purposes. See, e.g. *Law Society of Alberta v Martin*, 2023 ABLS 21, involving a joint submission including a $4,500.00 fine and a reprimand, but a significant reduction of costs.

28. The final component, and the one which gave me pause, is an award of $12,831.00 in costs.

Previous Hearing Committee Decisions on Joint Submissions Including Costs

29. The joint submission at hearing was that Mr. Goldsworthy would pay $12,831.00 in costs on a full indemnity basis. In considering this part of the submission I reviewed the 78 reported LSA decisions citing *Anthony-Cook* that involve a costs element. The hearing committees' approaches are variable. Many accept the submission with no separate consideration of the costs portion. Some of those approve the joint submission on the basis of payment of "actual costs" without saying what those are or assessing their reasonableness: e.g. *Law Society of Alberta v. Moughel*, 2016 ABLS 38; *Law Society of Alberta v. Peddie,* 2016 ABLS 49. (Such abbreviated forms of analysis are no longer sufficient post-*Charkhandeh*). Other hearing committees still consider, in applying the test in *Anthony-Cook*, the reasonableness of the costs even if the submission is joint: e.g. *Law Society of Alberta v Tiwana*, 2025 ABLS 17; *Law Society of Alberta v Farrell*, 2024 ABLS 11.

30. At least one previous hearing committee could not resist the urge to tinker. In *Law Society of Alberta v. Welz*, 2020 ABLS 28, the joint submission included a $5,000.00 fine and $2,047.50 in costs, with 13 months' time to pay. The hearing committee did not refer to *Anthony-Cook* but did mention the notion of the administration of justice being brought into disrepute. The reasons "determined that, subject to certain modifications, the joint submission as to the sanction is reasonable, consistent with sanctions in similar cases … does not bring the administration of justice into disrepute and is therefore in the public interest." (Emphasis added). It lowered the time to pay from 13 months to six, jumping the joint submission. The reasons do not explain why 13 months of time to pay would leave the public thinking the regulator had ceased to function—especially since the member had said he was going to wind-up his practice. While this decision demonstrates previous hearing committees have occasionally modified joint submissions, to do so without careful application of the test in *Anthony-Cook* risks reversible error.

31. Another hearing committee grappled with costs in the context of joint submissions in *Law Society of Alberta v Emiloju*, 2025 ABLS 3. The proposal contemplated a one-month suspension and payment of $2,000.00 in costs, a reduction from the actual amount incurred, though the decision does not reveal the actual costs. The hearing committee applied *Anthony-Cook*, noted the Guideline's presumption of full indemnity, and expressed a concern the $2,000.00 amount was markedly low. It is evident from the judgment that the hearing committee would have ordered a higher amount had the submissions not been joint. It accepted the sanction only "reluctantly", concluding that "this joint submission on sanction would be given deference but that it cleared the bar by the slimmest of possible margins. The hearing committee would suggest that any precedential value for this sanction should be looked at very carefully."

32. In *Farrell*, the joint submission was a reprimand, a $1,000.00 fine, and costs of $3,500.00. This was a reduction from a "very modest" estimated bill of $10,074.00. The hearing committee surveyed the evolution of costs principles in professional discipline from *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253, to *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313, *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, and *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2024 ABCA 94. (*Charkhandeh* had not yet been issued).

33. The *Farrell* hearing committee considered the factors from *KC*, including the result, the seriousness of the citations, the conduct of the member, and the reasonableness of the award. The committee found the joint submission amounted to 35% of the total costs, which was at "the low end of the reasonable range." It accepted the joint submission, "finding it to be within the range of possible sanctions that would satisfy the public interest test."

34. This mode of analysis sensibly asks what the hearing committee would otherwise have ordered and considers whether the joint submission is such a marked departure that it

would be viewed as a breakdown of the discipline system; the public would lose confidence in the regulator; or it is so unhinged from the circumstances of the offence that it would cause the public to believe the discipline process had broken.

35. Care must be taken in that approach. Decisionmakers may not begin by "reverse engineering" a sanction they would have delivered, compare it to the one on offer, and mechanically assessing its fitness at the expense of the predominant question of public interest. To do so would devolve to the fitness test the Supreme Court considered and rejected in *Anthony-Cook*: *R v Belakziz*, 2018 ABCA 370, paras. 18-25.

36. However, considering the sentence which would have been handed down in comparison to that in the joint submission is naturally *one important step* in the assessment: *Naslund*, paras. 66-76. Each of the tests in *Anthony-Cook* "has what is otherwise a fit sentence at its core", so a decisionmaker is "entitled to consider what an ordinary expectation of a sentence might be before or while factoring in the particular circumstances of the case and the public interest considerations that support imposing the joint submission": *R. v. C.R.H.*, 2021 BCCA 183 (Bauman, CJ), paras. 62-83.

37. This is a useful exercise. Even though a hearing committee will rarely reject a joint submission, it should still express what it would have done if the submission was not joint. Plea bargains are, after all, made in the shadow of the law. Published decisions stating what an appropriate outcome would be for a given set of facts shape the shadow under which negotiation occurs.

38. While the test in *Anthony-Cook* applies symmetrically, in considering whether the sanction is either too light or too heavy, the analysis may be different in nuance depending on which direction the panel is considering—jumping or undercutting: see para. 52 of the judgment, and para. 170 of *Naslund*. From the accused's perspective, undercutting a joint submission does not raise the same fears about being able to depend on the certainty of the deal made with the regulator's counsel. I note *Welz*, *Emiloju*, and *Farrell* all involve panels expressing discomfort with joint submissions which may be unduly *favourable* to the member; that is, where they were considering jumping over the joint submission, and indeed the hearingcommittee did so in *Emiloju*. Though Justice Moldaver's reasons suggest distinct analyses based on the direction of the concern, that has not historically been part of the approach of LSA's hearing committees.

Costs in Professional Discipline Generally

39. In *Charkhandeh* a five-justice panel of the Court of Appeal took "the opportunity… to address the issue of costs in professional disciplinary proceedings in a fresh manner": para. 129. Cost awards had, according to the Court, "become so large and disconnected from first principles that intervention is warranted": ibid.

40. The reasons forcefully disapprove of the trend toward ever-larger costs awards, and the thrust of the judgment is to reverse that drift. The Court jettisons two elements of the previous law, by holding there is no presumption one way or another about whether costs are payable, and clarifying that the seriousness of the charge is not a relevant consideration. And the panel makes several comments on granular details of costs, like the level of seniority of lawyers used, or payment for transcripts.

41. Somewhat surprisingly, given the context—where the Court granted leave to reconsider a previous case and was returning afresh to first principles—the reasons do not boil down the Court's guidance to an easy-to-follow recipe for decisionmakers in assessing costs. But one can be discerned:

    1) *Are costs warranted at all*? There is no presumption costs will be ordered. The number of allegations and degree of overall success are driving factors. Party conduct during the proceeding is an important consideration.

    2) *If costs are warranted, what should the amount be*? The costs claimed should be explained in detail and scrutinized.

        i. Were the expenses reasonably incurred in light of the nature of the investigation, the allegations, and the hearing process?

        ii. Are any of the claimed amounts "background overhead expenses" which are an inherent component of self-regulation and properly fall on the regulator?

        iii. Was the quantum paid by the regulator fair and reasonable?

        iv. Does the quantum represent an amount that the losing party should reasonably be expected to pay the winning party?

        v. What award is proportionate to the issues involved and the overall burden to the member?

    3) *Would that amount be a "crushing financial blow"*? This last-look puts a cap on what would otherwise be a proportionate award.

Applying the Test in Anthony-Cook to Costs in Professional Discipline

42. In the *Anthony-Cook* framework the questions to be answered look at the circumstances of the offence and the sanction and ask whether a reasonable person would see them as so unhinged that the joint submission is not in the public interest.

43. A sanction "cannot be 'unhinged' in the abstract; it is unhinged *from something*": *Naslund*, para. 73. The assessment of the costs component of a joint submission in

professional discipline does not fit easily into this formula, because there is little connection between the offence and the costs. In professional discipline, costs are not *supposed* to be a punitive sanction for an offence: *Charkhandeh*, paras. 117-119, 138. That is what reprimands, fines, suspensions, and disbarment are for. Costs rules in court proceedings generally do not include the merits of the underlying claims as a pertinent factor. Costs are about the behaviour during the proceeding, and the complexity of litigating it, not the actions which gave rise to it: *Charkhandeh*, paras. 138-140. This disconnection means there is little "hinge" or "fit" between the offence and the costs award for the decisionmaker to review and consider.

44. Although costs are one potential bargaining chip on the table for prosecuting counsel in a negotiation between a regulator and a member, the house—the Court of Appeal—in *Charkhandeh* devalued that chip by reducing members' median costs exposure and creating a cap where otherwise-justified costs would create a crushing financial blow.

45. Post-*Charkhandeh*, how can a hearing committee apply *Anthony-Cook*'s lens, which originates in criminal law, to the costs component of a disciplinary sanction? While the test remains relatively stringent, to promote certainty in plea negotiations, the case law suggests the following questions should be asked:

- What is the stated basis for the joint submission, including any benefits to the administration of justice? See *Belakziz*, para. 18.

- In the absence of a joint submission, applying the test in *Charkhandeh*, what costs would the Committee have awarded?

- How does this figure compare with the joint submission? Can the difference be justified on some principled basis?

- Is the difference so large that a reasonable person would think the LSA's discipline process has broken down?

- If a hearing committee considers either undercutting or jumping the joint submission as to costs, it ought to be more hesitant to jump than undercut, for the reasons expressed in para. 52 of Justice Moldaver's reasons, and para. 170 of *Naslund*.

46. One unusual feature of this case is its timing—the joint submission was negotiated and presented and then, while the decision was on reserve, *Charkhandeh* was released. The LSA has now made further submissions. While it maintains "this is an acceptable joint submission that is in the public interest and ought to be accepted," it goes on to propose a different, lower costs figure, $8,224.13. This is not presented as a joint request by both the LSA and the member, and Mr. Goldsworthy made no further submissions on the effect of *Charkhandeh*. The LSA's brief describes this alternative number as a unilateral

pitch that would only kick-in if the Committee rejects the original joint submission. But this is really a form of concession that, “in these very unique circumstances”, the joint submission, had it been made with the benefit of *Charkhandeh*, would have been in the amount of $8,224.13 and would have been justified on the basis argued in the LSA’s post-hearing brief. Although the submission is phrased as unilateral rather than joint, and applying only if the joint submission is rejected, the change in the law in *Charkhandeh* while this decision was on reserve permits the LSA to, as it has fairly done, concede that the joint submission ought to have been in the revised amount. On that basis I accept the LSA’s concession and assess the “alternative” number as a joint submission.

47. Applying the test in *Charkhandeh*, I would find costs warranted here even absent a joint submission. The LSA was entirely successful. Mr. Goldsworthy was not cooperative during the investigative stage, which drove up costs and justifies his bearing a measure of them.

48. As to the amount, the Updated Statement of Costs in this case shows 73.75 hours of investigative time at $100.00 an hour. The Updated Statement cuts the investigative bill by half, to $3,971.63. While the investigative hours are high, that is because, as he admits, Mr. Goldsworthy avoided the investigation. The work was required to address the allegations. I do not find $100.00 an hour to be an unreasonable rate for professional investigative services. I note the modest difference between investigative work at $100.00 and legal fees at $125.00 is out of line with the market differential between those two services. Although I am not in a position to take judicial notice, in the normal course lawyers cost at least twice as much per hour as investigators. The similarity in rates here is driven by the low rates charged by LSA counsel. For the purposes of this decision I do not address whether, in light of *Charkhandeh*, any distinction ought to be drawn between the legal fees the LSA claims for internal lawyers and external counsel.

49. The time incurred by LSA counsel, Ms. Falasinnu, of 22.3 pre-hearing hours in the nine months after citations issued reflects an efficient and professional approach. That included, among other things, disclosure, pre-hearing conferences, drafting and revising the Statement, assembling the exhibit binder, and negotiating the joint submission. Counsel’s time preparing for and attending the hearing itself is self-explanatory. The time described in the bill of costs is reasonable. The $125.00 an hour rate is, as I said, very low. I note that was the rate applicable to Legal Aid tariffs as of 2022. Ms. Falasinnu is a skilled 2011 call. While the Court of Appeal’s concerns about the quantum of legal fees in *Charkhandeh* at para. 152-154 are well-taken, it is fair to characterize Ms. Falasinnu’s charges as a bargain.

50. Would $8,224.13 represent the fair amount a losing party should reasonably pay to the winner? Is it proportionate? Those questions blend together.

51. First, the proposed award represents about 70% of full indemnity. A 70% indemnity award of $8,224.13, together with the $5,000.00 fine and reprimand, for a total financial

hit of $13,224.13, would not ordinarily be justified under *Charkhandeh*, and I would not have ordered it absent a joint submission. Although Mr. Goldsworthy's breaches harmed a client, he conducted himself well in the proceeding and pleaded early. Although the time entries, tasks, and rates are reasonable, a $8,224.13 award is not proportionate to the complexity of the case and does not reflect Mr. Goldsworthy's cooperative position in the proceeding.

52. From a parity perspective, a $8,224.13 costs award is not in line with others. In *Martin*, costs were capped at $2,500.00. *Emiloju*'s costs were $2,000.00, *Farrell*'s $3,500.00. A regulatory scheme whose outcomes do not reflect principles of parity where like conduct is punished similarly will, if not corrected, lose the confidence first of the profession and then the public. But those cases pre-date *Charkhandeh* and so are of little precedential value.

53. Had costs not been jointly agreed, I would have ordered $4,000.00, mainly on the basis that the investigation time was driven by Mr. Goldsworthy himself. There is no principled reason for the difference between this figure and the $8,224.13 joint submission, particularly given the $5,000.00 fine. The difference is a function of the normal cost of investigation and litigation, even where counsel is efficient. But "a costs award is intended to allocate the costs of the proceedings, not add another level of punishment": *Charkhandeh*, para. 138.

54. Though a $8,224.13 award is large, it does not rise to the level of being so great, in the context of the overall sanction including the fine and reprimand, and considering the circumstances of these citations, that the public would believe the discipline process has broken down. To meddle unduly with the joint submission on costs would risk undermining the reliability of settlement negotiations in which costs is a useful component.

55. This joint submission does not meet the high standard for rejection. I would still observe that routine inclusion of large costs awards in joint submissions may lead the public to lose confidence in a regulator, to think a disciplinary system has broken down—since it cannot fulfil its public interest mandate without imposing punishing awards on members. Indeed that view animated much of the Court of Appeal's reasoning in *Charkhandeh*. In an appropriate case this concern may meet the test in *Anthony-Cook*. But this proceeding, where both parties press the acceptance of a joint submission of an early guilty plea, and the LSA has offered an appropriate post-hearing concession, is not that case.

56. I recognize these reasons are issued at a turning point for costs in professional discipline. Future negotiations between Alberta regulators and members will be controlled by *Charkhandeh*. The prospect of massive costs will not be the loaded gun they were before. The previous system of costs may have necessitated a higher level of scrutiny for joint costs submissions than *Anthony-Cook* permitted. The guardrails now

imposed by the Court of Appeal should assure that the costs portion of joint submissions can be fairly handled under the *Anthony-Cook* test.

57. Finally, I should address Mr. Goldsworthy's assertion during the hearing that he was not aware he was able to negotiate costs. In accepting this joint submission, I leave for another day the possibility that in certain cases it may be apparent all or part of a joint submission was for some reason not actually the product of a fair bargain to the extent that the test in *Anthony-Cook* is met. The quasi-contractual rationale for deference to joint submissions brings with it other helpful legal concepts including unconscionability or duress that can bear on a joint submission where it is shown *not* to have been a bargain. (See, for example, the Supreme Court's repeated reminder in *Anthony-Cook* to remember potential inequality of bargaining power in weighing joint submissions). Rather than being a stand-alone basis for rejecting a joint submission, those concerns may in appropriate cases inform the application of the test in *Anthony-Cook*.

58. Here, Mr. Goldsworthy stated only that he did not know costs were negotiable. He did not argue against the acceptance of the joint submission or resile from it. Mr. Goldsworthy has been at the bar six years and had the opportunity to obtain independent counsel if he wished. He practices criminal and administrative law. He is not in what one would call an unusually vulnerable position, any more than a typical professional facing discipline. I am not convinced he was unaware, in working through a plea about a reprimand, fine, and costs, that costs were not negotiable. (I do not mean to imply that if a prosecuting counsel took the position they would not compromise on costs that this renders any joint submission *prima facie* unfair; it does not). Indeed the costs *were* negotiated, with an agreement on three months' time to pay, and a stipulation that the LSA would reduce the costs if the hearing took less than the anticipated three hours. In any event, the LSA then made a fair concession lowering the joint submission on costs substantially, to Mr. Goldsworthy's benefit.

Concluding Matters

59. The joint submission is accepted. Mr. Goldsworthy has been reprimanded. A $5,000.00 fine is levied, payable in three months. Costs of $8,224.13 are awarded to the LSA, due by the same date.

60. No notice to the Attorney General was requested and none is required on these facts. The LSA has not sought a Notice to the Profession. Such a Notice is discretionary in these circumstances under s. 85 of the *Act*. I decline to exercise my discretion.

61. The exhibits, hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a copy fee, except that identifying information in relation to persons other than Mr. Goldsworthy will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege.

Dated August 12, 2025.

_____

Scott Matheson, Chair

Appendix "A" – Oral Reprimand Delivered at Hearing

Mr. Goldsworthy, this morning you have admitted guilt to conduct deserving of sanction that justified three citations: Number 1, failing to provide competent, conscientious, and diligent services to your client; Number 2, failing to provide reasonable notice of withdrawal to your client; and Number 3, failing to respond promptly and completely to the Law Society.

As you just mentioned, these matters arose when you left your previous firm and started out on your own, which can be a difficult time for any lawyer. However, despite repeated and increasingly worried communications from your client, you generally failed to respond, did not attend a scheduled court date, and did not return her physical file. The missed court date led to her claim and counterclaim being struck with costs against her.

When you eventually responded to her, it was unduly aggressive by way of a [with] prejudice letter that did not speak to the court date that was missed and somewhat mischaracterized your previous conversations with her. Although you did belatedly end your professional relationship, you did not file a notice of withdrawal or notify opposing counsel. And at the time the Law Society became involved, you put off for months providing a substantive response, and then did not take appropriate steps to be interviewed by the Law Society.

I appreciate you have acknowledged this conduct breached your professional duties and deserves a sanction. I emphasize that these breaches in this case had real consequences for your client, including a striking of an action and a costs award. Your unprofessional response to her also must have breached her trust in you, and served to undermine the public's respect for a lawyer as a trusted advisor. Your attitude towards the investigation didn't demonstrate due respect for your role in a regulated profession.

Today I admonish you and reprimand you for the conduct I have just described. I hope you appreciate that this morning is a serious censure.

Now, I accept that you are remorseful, you have no prior disciplinary record, and you are committed to improving your conduct so it is not repeated. I appreciate you taking the opportunity this morning to apologize to your former client as an acceptance of responsibility. I know and trust that you will remember what is required of you, the faith your clients put in you, and the seriousness of any breach of that faith. I hope you take this experience constructively and renew your commitment to the best ideals of the profession.