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 and May 28, 2025

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. These reasons should be read together with this Committee's decision in *Law Society of Alberta v Cameron and Carpay*, 2025 ABLS 9 (Application).

2. John Carpay and Jay Cameron (Lawyers) are members of the Law Society of Alberta (LSA). They were entitled to practice law in Manitoba pursuant to the National Mobility Agreement (NMA). They both became involved in litigation challenging the restrictions Manitoba imposed in response to the COVID-19 pandemic (*Gateway*). Mr. Carpay was the President of the Justice Centre for Constitutional Freedoms (JCCF) which funded the *Gateway* applicants, and Mr. Cameron was the lawyer whom Mr. Carpay chose to be counsel in the application.

3. The citations before this Hearing Committee (Committee) arise as a result of the Lawyers conspiring to have a private investigator (PI) follow Chief Justice Joyal in hopes of obtaining evidence that the Chief Justice was breaching the public health restrictions Manitoba imposed in response to the COVID-19 pandemic, while the Chief Justice had the *Gateway* decision on reserve. The surveillance was discovered when the Chief Justice observed that he was being followed, and an agent of the PI attended the Chief Justice's home. The Chief Justice called a conference of counsel where the Lawyers attempted to explain themselves. The Lawyers confessed.

4. Both the LSA and the Law Society of Manitoba (LSM) received complaints. By agreement as permitted in the NMA, the investigation and disciplinary proceedings occurred in Manitoba first. The Lawyers admitted their misconduct. A Discipline Committee of the LSM found that the Lawyers were not candid with the Court when the plot was discovered, and that Mr. Cameron was not candid with the LSM in its investigation. A joint submission resulted in the Lawyers' ability to practice in Manitoba being severely restricted: *The Law Society of Manitoba v Carpay, Cameron*, 2023 MBLS 10 (LSM Decision).

5. The Lawyers were also charged criminally in Manitoba. A plea agreement resulted in a joint submission that saw the Lawyers agree to be bound by a civil peace bond forbidding their practice of law anywhere in Canada for three years, and the Crown withdrawing the charges. The LSA then instituted disciplinary proceedings in Alberta.

6. This Committee held in the Application that the LSA could pursue discipline in Alberta, despite the LSM having imposed a sanction in Manitoba. This Committee must now decide what, if any, discipline is required in Alberta.

7. For the reasons that follow, the Lawyers are disbarred.

Preliminary Matters

8. The parties confirmed that there remained no objections to the constitution of the Committee or its jurisdiction, and that a private hearing was not requested, so the hearing remained public.

Exhibits

9. The parties confirmed that the Committee may consider all of the exhibits that were previously entered into evidence. Additional exhibits were entered by consent of all parties:

    #11: Record of disciplinary proceedings (Mr. Cameron);
    #12: Record of disciplinary proceedings (Mr. Carpay);
    #13: Estimated statement of costs (Mr. Cameron);
    #14: Estimated statement of costs (Mr. Carpay);
    #15: Statement from JCCF (October 23, 2023);
    #16: National Post Article (April 28, 2025);
    #17: *Curriculum vitae* of John Carpay; and
    #18: Letter from Mr. Carpay to Joyal CJ dated February 15, 2022.

Facts

A. *The LSM Decision is proof of the Lawyers' misconduct*

10. The LSA relies upon a certified copy of the LSM Decision as proof of the Lawyers' guilt, pursuant to both the NMA paragraph 32 and Rule 73.2(9) of the Rules of the LSA

(Rules). The Lawyers agreed that the LSM Decision constitutes proof of their misconduct.

11. The LSM's recitation of the facts, and their conclusions are relevant to the outcome here. The LSM Decision is therefore attached to these reasons as Appendix 'A'.

12. Regarding Mr. Cameron, the LSA draws upon the LSM Decision to focus on four acts of misconduct:

- suggesting, and then participating in (by supervising and instructing the PI), the surveillance of Joyal CJ, while the judge had the *Gateway* decision on reserve;
- deleting emails related to the surveillance (within four days of the surveillance being discovered), instructing the PI to delete the emails (the day after the surveillance was discovered), and instructing the PI not to cooperate with the police;
- failing to be candid with the Court by minimizing his own involvement and not correcting Mr. Carpay's statements in Court; and
- failing to be candid with the LSM by suggesting that Mr. Carpay drew him into the conspiracy, when it was in fact Mr. Cameron who suggested it.

13. Regarding Mr. Carpay, the LSA focuses on four areas:

- hiring a PI to conduct surveillance of the judge who had the *Gateway* case on reserve, and participating in that surveillance (by supervising and instructing the PI);
- deleting relevant materials after the surveillance was discovered, and directing Mr. Cameron to instruct the PI to delete information and not cooperate with the police;
- failing to be candid with the Court; and
- failing to be candid with the LSA.

B. *Additional evidence regarding Mr. Carpay*

14. The LSA provided additional evidence regarding Mr. Carpay: Exhibit #15 (JCCF, News Release, "Statement from the Justice Centre: John Carpay innocent of criminal wrongdoing, charges stayed" (27 October 2023), online: <jccf.ca>); and Exhibit #16 (Conrad Black, "The persecution of John Carpay", *National Post* (24 August 2024), online: <nationalpost.com>). The LSA argues that Exhibit #15 is indicative of Mr. Carpay's lack of remorse. An argument about what inferences may be drawn from Exhibit #16 was not pursued.

15. Mr. Carpay provided sworn *viva voce* evidence and was cross-examined by Mr. Seidenz. Mr. Carpay's testimony included evidence about: (a) the circumstances

that led to retaining the PI; (b) Mr. Carpay's instructions to the PI; (c) whether hiring the PI was a litigation expense; (d) the LSM's finding that he failed to be candid with Joyal CJ when he said that Joyal CJ was not "targeted", and that he did not have pictures; (e) the deletion of emails; (f) his dealings with the LSA with respect to his failure to report being arrested for indictable offences in Manitoba, and what the LSA alleges is a false statement on his application to resign; and (g) his remorse and the consequences he has already faced.

16. Some of what Mr. Carpay testified to is aimed at challenging the LSM Hearing Committee's (LSM Committee) findings. We note that this Committee does not sit on appeal from the LSM. And, as discussed in the Application, issue estoppel would preclude relitigating these issues. But, as was noted in the Application, issue estoppel should not be strictly applied if doing so would work an injustice: *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at paras 1, 67. We have therefore considered Mr. Carpay's evidence, and we discuss our weighing of that evidence in this section.

(a) *The circumstances that led to retaining the PI*

17. Mr. Carpay testified that a "significant chunk" of JCCF's resources goes to "public education and fighting battles in the court of public opinion". His involvement in the *Gateway* case was the selection of counsel; he was not involved in the litigation itself.

18. Mr. Carpay said in examination-in-chief that he "heard rumours … I don't recall who I heard them from, but there were rumours circulating that the Chief Justice of Manitoba and the Premier were attending parties at each other's homes … That the Chief Medical Officer of Manitoba was breaking the COVID rules." In his opinion it would be hypocrisy and a disgrace to have public officials breaking the COVID-19 rules which they were imposing.

19. Mr. Carpay opined that the public has a right to know if "public officials, government officials" broke the COVID-19 rules. He decided to ascertain whether these rumours were true, by hiring a PI to do surveillance on three "officials": the Premier, the Chief Medical Officer (CMO), and the Chief Justice. He hired the PI and informed Mr. Cameron after the fact.

20. In cross-examination, Mr. Carpay said that he had forgotten Mr. Cameron's June 8, 2021 email, in which Mr. Cameron wrote "I think we should hire a PI to get pictures … I think it's a legitimate litigation expense", when he spoke to Joyal CJ. He also said that he did not see the June 8, 2021 email until the LSM proceedings; or maybe those proceedings had not formally commenced, but he did not see it until after July 12, 2021. He also said that he might have received the June 8, 2021 email but not seen it; he might have seen it but not read it; and he probably did receive it and probably did read it.

21. We note that Mr. Carpay's evidence is inconsistent with the admissions he made at the LSM hearing. The exhibits include the Statement of Agreed Facts (SAF) that Mr. Carpay signed at the LSM hearing. The admission at paragraph 5.7 is that "In approximately June of 2021 and while the decision in the Gateway Case was still on reserve, Mr. Carpay hired a private investigation service, [C.I.], to conduct passive surveillance of Premier Pallister and [the CMO], in an effort to obtain information …" The admission at paragraph 5.9 is that "By email, on June 16, 2021, Mr. Carpay instructed [V.D.] of [C.I.]

to commence surveillance of Chief Justice Joyal (Tab 4), making him the third government official to be observed …"

22. The exhibits also include Mr. Carpay's June 16, 2021 email to the PI, in which he wrote (among other things): "Thanks for the [CMO] work … I suggest that you commence surveillance of Premier Pallister to catch him breaking rules, and further watch Chief Justice Glenn Joyal of the Manitoba Court of Queen's Bench."

23. Mr. Carpay's testimony is inconsistent with the email record and his admissions at the LSM hearing. The emails show that Mr. Cameron suggested a list of people to watch, and that the CMO was already under surveillance when Mr. Carpay instructed the PI to watch Joyal CJ. We prefer the indisputable email record and the LSM Decision over Mr. Carpay's unreliable testimony.

(b) *Mr. Carpay's instructions to the PI*

24. Mr. Carpay explained that there was no written contract with the PI, who provided him with assurances that the person under surveillance would not know about it; "I didn't want anybody to contact the Premier or the Chief Medical Officer or the Chief Justice. And that was also the unequivocal commitment of the private investigator … a no-contact basis."

25. Mr. Carpay was cross-examined regarding the contents of Exhibit #15 (the JCCF News Release). The LSA's concerns with Exhibit #15 are reasonable. The news release is accurate in that retaining a PI is not without more a criminal offence, but there is a risk that a person who read Exhibit #15 would think that lawyers routinely hire PIs to follow judges by using "passive surveillance". We find that the risk of this news release misleading the public is remote. We accept Mr. Carpay's evidence that he did not intend to mislead the public in this news release, but we note that the news release is potentially misleading.

26. Exhibit #15 says that only "passive surveillance" occurred, despite the fact that a boy acting on the PI's behalf attended the Chief Justice's house and made contact with Joyal CJ's daughter. We consider that delving into what exactly "passive surveillance" is would not be useful; Exhibit #15 does not assist in deciding sanction.

27. As the LSM Committee observed, one wonders how the PI could comply with Mr. Carpay's instruction to identify the woman in Joyal CJ's car without at least some kind of contact with someone close to the Chief Justice. We also note the urgency that Mr. Carpay conveyed to the PI: put aside the surveillance of the Premier and CMO, give "top priority" to identifying the woman in Joyal CJ's car, and that knowing her identity would be "extremely valuable".

28. We do not reject Mr. Carpay's evidence that he wanted "passive surveillance" when he first retained the PI (anything else would obviously increase the risk of detection). But, we find that, whatever the discussions about "passive surveillance" at the beginning of the PI's retainer, Mr. Carpay's later conduct toward the PI was inconsistent with forbidding contact with either Joyal CJ or someone close to him.

(c) *Whether hiring the PI was a litigation expense*

29. Mr. Carpay continues to assert that hiring the PI had nothing to do with *Gateway*. He testified that he gave the matter "zero thought" when he told the office manager that the PI's invoice was a litigation expense; in any event, the expense was not related to any particular file. He ultimately reimbursed JCCF for the expense.

30. Mr. Carpay's evidence on this point is difficult to reconcile with Mr. Cameron's June 8, 2021 email, which Mr. Carpay eventually admitted to probably reading, in which Mr. Cameron said they should hire a PI and that it was a legitimate litigation expense.

31. As with the LSM Committee, we find that the emails are the best evidence of what happened. Mr. Carpay says now that he does not agree that hiring a PI was a legitimate litigation expense, but his past action in charging the cost as a litigation expense is inconsistent with that assertion. We do not accept his evidence that the surveillance had no connection to the *Gateway* litigation.

(d) *The deletion of emails*

32. Mr. Carpay testified that he did not recall instructing Mr. Cameron to tell the PI to both delete all of the correspondence and to not talk to the police, the day after learning that the surveillance had been detected, but he conceded that it was possible that he did give those instructions.

33. Mr. Carpay did recall being advised by "someone" that "there was hacking going on" when he deleted "tens of thousands of e-mails" sometime after July 13, 2021. He says the deletion is routine, and the timing is coincidental. This Committee did not receive any other evidence regarding JCCF's email systems being hacked.

34. The LSM Committee neither accepted nor rejected the claim about a concern over computer hackers ("While the wholesale purging (and subsequent recovery) of their JCCF Outlook accounts by both Carpay and Cameron *may* have been justified to shield their content from outside hackers …": LSM Decision at para 86 [emphasis added]). We do not consider ourselves bound by the LSM Committee's non-finding of fact.

35. The fact that the emails were later recovered does not change the facts of the timing of the deletion, and that the deletion is so close in time to instructions Mr. Carpay gave the PI (via Mr. Cameron) to delete the same emails, and to not cooperate with the police. Neither the LSM Committee nor this Committee has been provided any explanation as to how the PI deleting the inculpatory emails would address a hacker issue at JCCF. Nor has there been an attempt to explain how instructing the PI to withhold their cooperation from the police could address a hacker problem.

36. In our opinion, Mr. Carpay intended to conceal the Lawyers' involvement in this plot when he deleted those emails and instructed the PI.

(e) *The failure to be candid with the Court*

37. Mr. Carpay described receiving a telephone call from Mr. Cameron on July 9 or 10, 2021 regarding the surveillance being discovered, and his virtual court appearance before

Joyal CJ on July 12, 2021. He admitted to Joyal CJ that he had hired the PI and told the Court that Joyal CJ was not "targeted".

38. Mr. Carpay explained to this Committee that, when he told Joyal CJ that he was "not targeted", he meant that Joyal CJ was not the only person put under surveillance; he says that "to me targeted means you're going after one person."

39. Mr. Carpay testified that he did receive "innocuous" photos and videos but did not receive evidence of Joyal CJ breaching the health orders.

40. When Joyal CJ asked "Are you intending to bring pictures?", Mr. Carpay responded "we don't have pictures or other information whatsoever", despite the fact that Mr. Carpay did have pictures of the Chief Justice. Mr. Carpay explained to this Committee that he understood Joyal CJ's question to relate to pictures showing non-compliance with the COVID-19 restrictions, not the innocuous pictures in his possession.

41. This Committee is not prepared to disagree with the LSM Committee's finding that Mr. Carpay lied when he said that Joyal CJ was not "targeted". In our opinion, the word "targeted" cannot bear the meaning Mr. Carpay would give it. We also note Mr. Carpay's June 16, 2021 email, in which he instructed the PI to add one person to the list of people under surveillance, the one person being Joyal CJ.

42. We are, however, satisfied that Mr. Carpay did not intend to mislead the Court when he said that he did not have photographs. Reading that answer in the context of the entire conversation, it is reasonable to believe that Mr. Carpay meant that he had no photographs of Joyal CJ breaching the COVID-19 restrictions. However, his statement about not having any photographs at all is only partially true, and had the potential to mislead.

(f) *The failures to be candid with the LSA*

43. Mr. Carpay explained that he failed to report to the LSA that he had been charged criminally in Manitoba due to the "shock and stress" of being arrested and gaoled overnight. He did apologize to the LSA for his error and cooperated fully with the LSA after that.

44. Mr. Carpay applied to resign from the LSA on December 6, 2023 (without any admission of wrongdoing; this was *not* an application to resign in the face of disbarment *per* section 61 of the *Legal Profession Act (Act)*). The LSA argues that Mr. Carpay was dishonest when he indicated on the application form that "I am not aware of any discipline matters or investigations of my professional conduct currently in progress." Mr. Carpay explained in his testimony that this was a true statement at the time he made it. In cross-examination, he said that he had not heard from the LSA for several months and had no recollection of receiving a November 16, 2023 letter from LSA Conduct Counsel advising that she was reviewing the complaint. The exhibits include that letter, which is addressed to Mr. Carpay's counsel and cc'ed to Mr. Carpay.

45. Mr. Carpay's testimony is inconsistent with the exhibits, which include a December 6, 2023 letter that Mr. Carpay attached to his application to resign, addressed to the CEO of the LSA. He provided in that letter an explanation for why he answered as

he did on the application. He also wrote that he was aware that his counsel had been corresponding with LSA Conduct Counsel, and reminded the CEO of the *Charter* and "double jeopardy". The exhibits also include a letter that Mr. Carpay's counsel wrote to LSA Conduct Counsel on November 20, 2023, regarding the *Charter* and "double-jeopardy" (signed by Mr. Steigerwald). The timing of Mr. Carpay's application to resign, and the contents of his December 6, 2023 letter to the CEO, show that he received LSA Conduct Counsel's letter of November 16, 2023.

46. We therefore reject Mr. Carpay's evidence on this point. He knew that the LSA considered this matter unresolved when he completed the application form. However, given that he provided the letter explaining his answer, and copied it to LSA Conduct Counsel, we conclude that he did not intend to mislead the LSA even though his application might have been misleading. We do not consider the answer on the application form to be an aggravating factor.

(g) *Mr. Carpay's remorse and the consequences he has already incurred*

47. Mr. Carpay testified to the many apologies he has made: to Joyal CJ in the LSM hearing, to the JCCF Board of Directors and colleagues, to friends and family, and to this Committee. He said that he has embarrassed himself as a lawyer, his family, his JCCF colleagues, and the profession.

48. Mr. Carpay testified that he wrote an apology letter to Joyal CJ dated February 22, 2022, which he read into the record (Exhibit #18). He could not remember how the letter was sent. This was after *Gateway* concluded (we note that Joyal CJ's decision regarding costs was released on February 1, 2022, which ended the matter in the Court of King's Bench: *Gateway Bible Baptist Church et al v Manitoba et al,* 2022 MBQB 22).

49. We note that the October 27, 2023 JCCF News Release (Exhibit #15), which Mr. Carpay helped author, says that Mr. Carpay's only contact with Joyal CJ was through a letter of apology in October 2021. Whatever the date actually was, we assume that the apology did happen. The inconsistency does, however, affect our assessment of Mr. Carpay's reliability.

50. With respect to the JCCF News Release (Exhibit #15), Mr. Carpay stands by his statement that the criminal prosecution in Manitoba was an abuse of process. In his view, denouncing those proceedings is not inconsistent with his remorse for his error. We make no comment about the merits of the criminal prosecution but Mr. Carpay is entitled to his opinion about it. We do not find that this news release is evidence of a lack of remorse regarding the misconduct.

51. Mr. Carpay said that he has already paid a "very heavy price" with the JCCF Board putting him on a leave of absence for six weeks, the disciplinary process in Manitoba, being punished in Manitoba, facing a criminal prosecution, the peace bond that prohibits practice of law anywhere in Canada, spending 23 hours in gaol, the proceedings in Alberta, and the associated costs; he said that "the process is the punishment."

(h) *The Committee's weighing of Mr. Carpay's evidence*

52. We find that Mr. Carpay is an unreliable historian with a convenient memory. As explained above, Mr. Carpay's *viva voce* evidence is rife with inconsistencies, gaps, improbabilities, and at least one falsehood. His evidence does not give this Committee cause to question any part of the LSM Decision.

53. We assure Mr. Cameron that we have not considered Mr. Carpay's evidence as it related to Mr. Cameron's own conduct.

C. *The LSM Order*

54. The Committee must correct part of the Application reasons, in which we wrote that "the Lawyers could never again practice law in Manitoba": Application at para 2. The LSM Committee's Order is that the Lawyers are "permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba."

55. During the hearing, the Chair's questions of counsel did not result in a consensus about what these exceptions mean. In our opinion, whatever the exact contours of these exceptions are, the Order is at the very least a severe restriction on the Lawyers' ability to practice law in Manitoba.

D. *The position of the parties*

56. The LSA seeks the disbarment of both Lawyers. Mr. Steigerwald argues that Mr. Cameron should be suspended until the expiry of the Manitoba peace bond (which would be October 26, 2026). Mr. Hepner argues that Mr. Carpay should be suspended for two more years.

Analysis

A. *General principles regarding sanction*

57. We are guided by the LSA Pre-Hearing and Hearing Guideline at paragraphs 185 and 186:

> The fundamental purposes of sanctioning are to ensure the public is protected from the acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.
>
> Other purposes of sanctioning include:
>
> a. specific deterrence of the lawyer;

b. where appropriate to protect the public, preventing the lawyer from practicing law through disbarment or suspension;

c. general deterrence of other lawyers;

d. ensuring the Law Society can effectively govern its members; and

e. denunciation of the misconduct.

58. In *Law Society of British Columbia v Ogilvie,* 1999 LSBC 17, a discipline panel of the Law Society of British Columbia provided a non-exhaustive list of appropriate factors which might be considered in determining sanction: (a) the nature and gravity of the conduct; (b) the age and experience of the member; (c) the previous character of the respondent, including prior discipline; (d) the impact upon the victim; (e) the advantage gained or to be gained by the member; (f) the number of times the offending conduct occurred; (g) whether the member had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; (h) the possibility of remediating or rehabilitating the member; (i) the impact on the member of criminal or other sanctions or penalties; (j) the impact of the proposed penalty on the member; (k) the need for specific and general deterrence; (l) the need to ensure the public's confidence in the integrity of the profession; and (m) the range of penalties imposed in similar cases.

59. The *Ogilvie* factors may be grouped into four broad categories: (a) the nature, gravity, and consequences of the conduct; (b) the character and professional conduct record of the member; (c) acknowledgement of the misconduct and remedial action; and (d) public confidence in the legal profession including public confidence in the disciplinary process. Not all of the *Ogilvie* factors are applicable to every case. The Committee must prioritize protection of the public as the paramount consideration: *Pelletier (Re)*, 2023 LSBC 47.

60. A lawyer's motives are not relevant to the finding of misconduct, but motive can be relevant to the penalty: Gavin MacKenzie, "Lawyers & Ethics: Professional Responsibility and Ethics – the Regulation of the Profession" (1993) at ch 26.18, online: (WL Can) Thomson Reuters Canada.

61. Mr. Seidenz referred the Committee to *Bolton v The Law Society***,** [1993] EWCA Civ 32. The Court in that case opined that the purpose of maintaining the reputation of the profession is "the most fundamental of all". Because professional discipline is not primarily punitive, a lawyer's personal circumstances have less weight in mitigation than in a criminal case. "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price": *Bolton* at para 15; also see *Law Society of British Columbia v Lessing*, 2013 LSBC 29 at paras 57-60.

62. We note the panel's comments in *Law Society of British Columbia v McGuire*, 2006 LSBC 20 at para 24 [*McGuire*]: "Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, '*don't even think about it.*' And that demands the

imposition of severe sanctions for clear, knowing breaches of ethical standards" [emphasis added].

B. *Application of the principles*

(a) *The range of penalties imposed in similar cases*

63. We start by considering the last *Ogilvie* factor first (also see MacKenzie at ch 26.18). Our Court of Appeal has described "parity" as "one of the fundamental normative values that must inform every just sanctioning exercise": *Constable A v Edmonton (Police Service)*, 2017 ABCA 38 at para 58. To that end, all counsel provided reports of previous decisions to assist this Committee in identifying an appropriate sanction.

64. The cases provided included a long list of different kinds of misconduct: misleading the court by omitting information or authorities (*Healthy Lifestyle Medical Group v Chand Morningside Plaza Inc.,* 2019 ONCA 248; *Blake v Blake*, 2019 ONSC 4062; *The Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie v Axa Insurance (Canada)*, 2015 ONSC 4755; *Kapoor v The Law Society of Saskacthewan*, 2019 SKCA 85); intimidating witnesses (*Law Society of British Columbia v Ewachniuk*, 2000 LSBC 18, aff'd 2003 BCCA 223); fabricating evidence (*Zoraik (Re)*, 2013 LSBC 13); participating in a criminal organization (*Mastop (Re)*, 2013 LSBC 37); submitting false declarations (*Law Society of Upper Canada v Wijesink*, [1998] LSDD 89); fraud (*Huculak (Re)*, 2023 LSBC 5), counselling a client to lie (*LSA v Ackah*, 2013 ABLS 2); misstating evidence (*Law Society of Alberta v Magnan*, 2014 ABLS 24); not providing complete answers to the Court when asked (*Law Society of Alberta v Wald*, 2007 LSA 26); disparaging a judicial appointment (*Law Society of Alberta v Rauf*, 2018 ABLS 13 [*Rauf*]); trying to coerce a government body to settle litigation by threatening to expose supposed perjury of one of its employees (*Hittrich (Re),* 2019 LSBC 24); adducing an Affidavit that disparaged a judge (*R v Rappaport*, 2024 ONSC 5933 [*Rappaport*]); attempting to induce a client to drop a law society complaint (*Batchelor (Re)*, 2013 LSBC 9); sharp practice (*McLeod (Re),* 2023 LSBC 20); breaching a bail order (*Law Society of Upper Canada v Mundulai*, 2011 ONSLAP 23); drafting a contract with a criminal rate of interest (*Lim (Re)*, 2019 LSBC 19); and swallowing mouthwash to defeat a blood alcohol reading (*Berge (Re)*, 2005 LSBC 53).

65. The reports counsel provided do show how the principles have been applied, and that more serious misconduct attracts more serious consequences. But, as counsel conceded, none of these is directly on point. As Mr. Seidenz put it, this matter is "*sui generis*" (of its own kind). There is no comparator case.

(b) *The nature of the misconduct*

66. It is difficult to put the "nature" of the Lawyers' misconduct into any category, such as misapprehension of funds or conflict of interest.

67. The Lawyers' conduct in hiring the PI to follow a sitting judge was inconsistent with their obligations as lawyers, and their subsequent conduct raises concerns about their integrity.

(c) *The gravity of the misconduct*

68. The gravity of this misconduct cannot be understated.

69. Wagner CJC recently observed: "… lawyers in Canada are officers of the Court, with a responsibility and an obligation to support judicial independence and the rule of law": Dale Smith, "The rule of law a non-negotiable in Canada", *CBA National* (10 June 2025), online: <nationalmagazine.ca>. We agree with Perlmutter ACJ's comment when accepting the joint submission for a peace bond, that this case is "of interest to all Canadians who value the rule of law and judicial independence … What these lawyers did, is nothing short of an affront to the administration of justice." *R v Carpay*, (27 October 2023), Winnipeg CR23-01-39670 (MB KB).

70. The Lawyers' misconduct was an attack on judicial independence. Mr. Carpay may justify his conduct under the rubric of the public's "right to know", but he is wrong. Judges are not the same as Premiers and Chief Medial Officers (a point he did not seem to fully appreciate, even when asked). An independent judiciary is essential to the rule of law. Whether the lawyer respects the person occupying the judicial office, the lawyer must respect the office.

71. Individual judges are not exempt from criticism, even from lawyers: *Rauf*, *supra* para 64. A lawyer does not fail to encourage respect for the administration of justice merely by speaking out against the conduct of justice system participants. The question is how they choose to do so: *Rappaport, supra* para 64 at para 14. Gathering and publishing embarrassing material involving a public figure is what the tabloids do. When the target is a judge, the conduct is wholly inconsistent with a lawyer's obligation to the Court, regardless of the lawyer's opinion about the person occupying the judicial office.

72. We adopt the LSM Committee's observation: "Judges must have no fear of being subjected to harassment or physical harm … The harassment of one judge is a psychological threat to all judges, and cannot be tolerated in a free and democratic society": LSM Decision at para 91.

73. This was more than an error in judgment. The Lawyers knew that they had breached their ethical obligations, if not the law. They focused the PI's attention on the judge, and the surveillance ended only when it was discovered. Only a guilty conscience explains the destruction of evidence and the instructions to the PI (indeed, we note that the prosecutor explaining the Crown's decision to accept a peace bond described the PI witnesses as "reluctant").

74. The Lawyers forgot, or disregarded, or were wilfully blind to the fact (it is not clear which would be worse) that they were members of a profession that owes a duty to the Court, and ultimately to the "non-negotiable" rule of law in Canada when they appointed themselves to police a sitting judge, in an attempt to get evidence that could only embarrass the judge, in order to use that evidence in prosecuting the judge in the court of public opinion. It seems they did not see the irony in their attempt to bring into disrepute the very administration of justice that the JCCF and *Gateway* applicants relied upon to address what they perceived as government overreach.

75. With respect to the *Ogilvie* factor of the impact on the victim, we note that the prosecution in Manitoba conceded that Joyal CJ himself was not intimidated. In fact, Joyal CJ at one point turned the tables and followed the PI. Nonetheless, Joyal CJ's incredulity at having been tracked to his home and the contact with his family member is apparent from the transcript. In any event, we view the "victims" here as the legal profession and the administration of justice. As Mr. Carpay said in his examination-in-chief, he has embarrassed his profession.

76. We received *no evidence* that Joyal CJ breached any COVID-19 restrictions (it would have been irrelevant in any event). But, if the Lawyers' plan had come to fruition, publication would necessarily have affected Joyal CJ's personal reputation, which Mr. Carpay in his evidence seemed to think was simply collateral damage. He neglects to add that his plan would also have affected the legitimacy of the *Gateway* decision, any case that Joyal CJ decided in the future, and the Court's reputation in general.

77. We do not consider the pandemic, or the government's responses to it, or that Mr. Cameron had the stress of many related files, are mitigating circumstances. Lawyers are expected to abide by the rules, even when that is difficult to do: "It is exactly when the stresses are greatest, when compliance with our profession's rules of conduct are most difficult, that members must faithfully hew to the line": *Re Reilly*, 1995 CanLII 3840 (ON LST). We have not been provided any suggestion of a nexus connecting either the pandemic, or Mr. Cameron's stress, to the misconduct.

78. Questions regarding the Lawyers' integrity seem incidental in comparison to the hiring of the PI. Nonetheless, misleading the Court and the regulator is also serious misconduct.

(d) *The character and professional conduct record of the Lawyers*

Mr. Carpay

79. Mr. Carpay was admitted to the Alberta bar in 1999. He told the Committee of some of the litigation he has been involved in, and his involvement in the community. Mr. Carpay is now 58 years old, has four children, and is still involved in the JCCF but not practicing law. He has abided by the terms of the civil peace bond. Mr. Carpay has no disciplinary record. He has apologized for his misconduct several times. He acknowledged his misconduct and cooperated with the disciplinary process.

80. Mr. Carpay explained in examination-in-chief that the problem with his actions is that Joyal CJ had not yet given his *Gateway* decision; Mr. Carpay explained that he opened the door for people to speculate about using the fruits of the investigation to influence the judge. And, "it's just not appropriate for a lawyer who is involved in the litigation process to be doing surveillance on a judge." Notably, Mr. Carpay did not connect his misconduct to the larger concepts of judicial independence or the rule of law. We have not considered his lack of insight as an aggravating factor. Nor have we considered the fact that we did not find Mr. Carpay to be a reliable witness as an aggravating factor.

Mr. Cameron

81. Mr. Cameron was admitted to the Alberta bar in 2008. He is an inactive member of the Law Society of British Columbia. He is 47 years old, married, and is the sole provider for his family. He ran a private practice and was retained by the JCCF for *Gateway*. His practice had dropped off by mid-2022 and he was unable to continue. He has abided by the terms of the peace bond. He has been supporting his family through savings, manual labour, landscaping, and odd jobs. Except for his attempt at deceiving the LSM by suggesting that Mr. Carpay drew him into the plot, he has acknowledged his misconduct and cooperated with the disciplinary process. We accept that he regrets his actions.

82. We accept that disbarment has significantly more of an impact on Mr. Cameron than on Mr. Carpay, who is still paid by the JCCF.

(e) *Public confidence in the legal profession including public confidence in the disciplinary process*

83. We have concluded that there is no disciplinary measure short of disbarment that can achieve the "most fundamental" goal of maintaining the reputation of the profession.

84. Appearances matter. Even though the prosecution in Manitoba thought they could not prove beyond a reasonable doubt that the Lawyers had the *mens rea* to obstruct justice when setting out to embarrass the judge who was deciding their case, a reasonable observer would think that influencing the judge's decision is what the Lawyers intended. The Committee adopts Perlmutter ACJ's words: "It should go without saying that our institutions, our public officials and the citizenry's own deep respect for the rule of law and judicial independence will, like Chief Justice Joyal himself, never permit this sort of behaviour to take place, even once, let alone as a normalized litigation strategy." The public must know that lawyers *do not* and *cannot* engage in this misconduct. As was said in *McGuire*, *supra* para 62, other lawyers must receive the message: "Don't even think about it."

85. The public must also know that our self-governing profession takes misconduct of this kind seriously. We have considered that disbarment is the harshest penalty available and that it will necessarily have a significant impact on both Lawyers, especially Mr. Cameron. But the principle in *Bolton* is unforgiving – the reputation of the profession is more important than the fortunes of any individual member. The misconduct in this case, compounded by issues regarding integrity, leads us to find that a reasonable observer would surely consider that misconduct of this kind must inevitably result in disbarment.

Decision on Sanction

86. Pursuant to section 72(1)(a) of the *Act*, the Committee orders that John Carpay be disbarred.

87. Pursuant to section 72(1)(a) of the *Act*, the Committee orders that Jay Cameron be disbarred.

Decision Regarding Costs

A. *The position of the parties*

88. The Committee heard submissions regarding costs at the conclusion of the hearing on May 28, 2025. The issue was not seriously contested. The LSA submitted estimated statements of costs of $11,946.38 for Mr. Carpay, and $10,476.38 for Mr. Cameron. Mr. Steigerwald suggested that the amount should be reduced by $5,000.00 to reflect the costs the LSM Discipline Committee imposed; he conceded that the $5,000.00 is the result of a negotiated joint submission and would reflect only a part of the LSM's actual costs.

89. While the Committee was considering this decision, the Court of Appeal released its decision in *Charkandeh v College of Dental Surgeons of Alberta,* 2025 ABCA 258 [*Charkandeh*]. The Committee invited further written submissions regarding the impact of *Charkandeh*. The LSA updated its estimated costs by removing the *per diems* and the cost of the court reporter, and now seeks costs of $9,000.00 from Mr. Carpay, and $7,500.00 from Mr. Cameron. Mr. Steigerwald argues that Mr. Cameron should not be ordered pay costs at all or, in the alternative, the order should be for less than what the LSA seeks.

B. *An order for costs is appropriate in this case.*

90. The Court in *Charkandeh* held at para 132 that the starting point in relation to costs in disciplinary proceedings should be the wording of the statute. Section 72(2)(c) *Act* authorizes the Committee to make "an order requiring payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order" but provides no guidance as to how the Committee should exercise its discretion. The Rules describe what may appropriately be included in an estimation of costs but similarly provide no guidance regarding the exercise of discretion.

91. *Charkandeh* confirms that costs are in the discretion of the Committee, and that the discretion must be exercised judicially and transparently, based on relevant considerations. There is no presumption that costs should be awarded. The Committee must in every case decide whether costs are warranted and, if so, the amount: *Charkandeh* at para 136.

92. Costs are intended to allocate the cost of the hearing; they are neither intended to be a form of sanction, nor to denounce the conduct. The length and extent of the hearing and the conduct of the parties are what is relevant. An important factor is whether costs have been increased due to the unreasonable or inefficient litigation conduct of either party (for example things like introducing unnecessary or irrelevant evidence, bringing unnecessary applications, delaying proceedings, or failing to meet reasonable deadlines): *Charkandeh* at paras 137-143.

93. The Committee notes that the Court in *Charkandeh* rejected the presumption against costs found in *Jinnah v Alberta Dental Association and* College, 2022 ABCA 336. And, the Court in *Charkandeh* did not hold that the Committee must find that a lawyer engaged in unreasonable or inefficient litigation is a condition precedent to a direction to pay costs. Unreasonable or inefficient litigation strategies would serve to increase costs, but the absence of those strategies does not necessarily mean there will not be an order for costs.

94. We find that it is appropriate to shift some of the costs of these proceedings to the Lawyers. The number of allegations and overall success (or lack thereof) is relevant. We do not consider the Lawyers' application for a discontinuance was "unreasonable or inefficient" but the fact remains that the Lawyers were unsuccessful, and the application did increase the LSA's costs. We also consider Mr. Carpay's attempt to relitigate issues that were decided in Manitoba, with only marginal success.

C. *The quantum of costs*

95. Full indemnity is neither the starting point nor the default. The amount must be reasonable in that:

(a) the expenses must have been reasonably incurred having regard to the nature of the investigation, the allegations, and the hearing process;

(b) the quantum paid by the regulator must be fair and reasonable;

(c) it must be reasonable to transfer the burden of those costs to the lawyer; "As stated in *Barkwell v McDonald*, 2023 ABCA 87 at para 59, the issue is not only whether the costs were reasonably incurred, 'but whether the quantum represents an amount that the losing party in the litigation should reasonably be expected to pay the winning party"; and

(d) the costs award must be proportionate to the issues involved, the circumstances of the member, and the overall burden it places on him or her.

Charkandeh at para 144.

96. The LSA's costs are based on counsel's time, at $125/hour. We are advised that this hourly rate has not changed since 1999. The rate is a fraction of the market rate for an experienced advocate in Alberta. The rate is reasonable, if not favourable to the Lawyers.

97. The estimated costs do not include "overhead" items such as *per diems,* the court reporter, or LSA Tribunal Counsel.

98. We do not deduct from the LSA's updated estimates the $5,000.00 costs order from Manitoba. To do so would effectively be double-counting that amount because whatever work led to that order in Manitoba is work that would not have to be done in Alberta, such that the $5,000.00 would not be included in the LSA's estimates. We also note that the $5,000.00 is the result of a negotiated joint submission and that Mr. Steigerwald conceded that the amount is only a part of the LSM's costs.

99. We do not agree with Mr. Steigerwald's suggestion that the 14.8 hours LSA counsel spent on responding to two different legal briefs in the Application should be reduced by 50%. It is true that the issues in both briefs were substantially the same but we do not accept a suggestion that Mr. Seidenz is attempting to bill the same work to both Lawyers; he has split the total amount between them. In our opinion, the total of 29.6 hours for a complex application is reasonable.

100. We believe that the time taken to prepare the LSA materials in Affidavit form after the LSA's draft Statements of Admitted facts were not executed is reasonable. We accept that much of the materials (if not all, in Mr. Cameron's case) was already before the LSM but we have not seen what the LSA started with. The Committee found the materials filed by all parties were helpful. Of course, we also recognize that Mr. Cameron did not dispute any facts, and Mr. Carpay did not dispute many facts. We have therefore deducted the total of 13.2 hours attributed to the ASF that was not ultimately executed, but we have left the total of 14 hours attributed to preparation of the thorough and well-organized Affidavit (Exhibit #10).

101. We do agree that Mr. Carpay's decision to testify meant that Mr. Seidenz spent more time at the sanction hearing addressing Mr. Carpay's evidence, and that Mr. Cameron should not face a financial penalty for agreeing to a joint hearing. We accept Mr. Steigerwald's submission that Mr. Cameron's costs should be reduced by four hours in this regard.

102. Given Mr. Seidenz's fair concession that the reasons in the Application were important to the LSA, we have reduced the costs attributed to that application by 25% for both Lawyers.

103. The result is that we have reduced the estimate as it relates to Mr. Carpay by 13 hours or $1,625.00 (7 hours for the ASF, and 6 hours for the Application). We have reduced the estimate as it relates to Mr. Cameron by 18 hours or $2,250.00 (7 hours for the ASF, 6 hours for the Application, and 4 hours for the sanction hearing).

104. We must finally consider whether costs of $7,457.50 against Mr. Carpay, and $5,270.63 against Mr. Cameron, is either crushing or disproportionate: *Charkandeh* at para 147. We recognize that these amounts are not insubstantial. The amount will be a burden,

particularly for Mr. Cameron. Nonetheless, we do not think that these amounts are so high that they are either crushing or disproportionate.

105. Given the low rate upon which the LSA has based its claim for costs, and the foregoing factors, we find that the LSA is entitled to costs, in an amount we deem reasonable:

- Pursuant to section 72(2)(c) of the *Act*, Mr. Carpay will pay to the LSA costs of $7,457.50. The costs must be paid within one year of the release of this decision.

- Pursuant to section 72(2)(c) of the *Act*, Mr. Cameron will pay to the LSA costs of $5,270.63. The costs must be paid within one year of the release of this decision.

Concluding Matters

106. Despite the mandatory language in section 78(6) of the *Act*, we do not direct a referral to the Minister. These events occurred in Manitoba, where a criminal prosecution has already concluded.

107. Notices to the Profession of the disbarments are required pursuant to section 85 of the *Act* and shall be issued.

108. 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 identifying information in relation to persons other than Mr. Cameron and Mr. Carpay and certain others whose names are already public will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated September 2, 2025

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Troy Couillard - Chair

_____

Cheryl McLaughlin

_____

Darlene Scott, KC

Appendix A

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JOHN CARPAY & JAY CAMERON

- and –

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: August 21, 2023

Panel: Douglas Bedford (Chair)
Dean Scaletta
Carmen Nedohin (Public Representative)

Counsel: Rocky Kravetsky & Ayli Klein for the Law Society of Manitoba
Saul Simmonds, K.C. for John Carpay
Alex Steigerwald for Jay Cameron

REASONS FOR DECISION

Introduction

1. John Carpay ("Carpay") is a practising member of the Law Society of Alberta ("the LSA), having been called to the Bar there in 1999.

2. Jay Cameron ("Cameron") is a practising member of the LSA, having been called there in 2008; he is also an inactive member of the Law Society of British Columbia.

3. Neither Carpay nor Cameron is a member of the Law Society of Manitoba ("the LSM "), and neither is a member of any other Law Society aside from those noted above. Neither has any formal discipline history with any governing body of the legal profession in Canada.

4. Carpay was charged with three counts of professional misconduct in a citation dated July 5, 2022 ("the Carpay Citation"):

   (a) one count of failing to treat the Court with candour, fairness, courtesy and respect ("Count 1"), contrary to Rule 5.1 of the LSM Code of Professional Conduct ("the Code");

(b) one count of undermining the public respect for the administration of justice ("Count 2"), contrary to Rule 5.6 of the Code; and,

(c) one count of failing to discharge all of his responsibilities to his client, tribunals, the public and other members of the profession honourably and with integrity ("Count 3"), contrary to Rule 2-1.1 of the Code.

The Carpay Citation is attached as Appendix "A" to these Reasons.

5. Cameron was charged in a citation dated August 16, 2023 ("the Cameron Citation") with one count of professional misconduct for failing to discharge all of his responsibilities to his clients, the Court, the public, the [LSM] and other members of the profession honourably and with integrity, contrary to Rule 2-1.1 of the *Code*.

The Cameron Citation is attached as Appendix "B" to these Reasons.

Preliminary Matters

6. The hearing convened on August 21, 2023, and quorum was declared pursuant to sub-Rule 5-93(7) of the LSM Rules ("the Rules"). Carpay attended the hearing in person; Cameron did not attend either in person or virtually.

7. At the outset of the hearing, counsel for Carpay and Cameron each waived the reading of the relevant Citation, and each confirmed that neither party objected to any of the Panel members either on the basis of bias or conflict, or otherwise.

8. Carpay and Cameron each admitted that they had been validly served with their respective Citations, and each admitted that the LSM, and this Panel, have jurisdiction over them with respect to the allegations set out in those Citations.

9. With respect to jurisdiction specifically, the Panel was advised that:

1. Cameron appeared as co-counsel in a Court of Queen's Bench (now the Court of King's Bench) matter, Court File No. C120-01-29284 ("the *Gateway* case"), pursuant to the "temporary mobility" provisions of the Federation of Law Societies of *Canada National Mobility Agreement*, 2013 ("the *NMA*");

2. the misconduct of both Cameron and Carpay took place in Manitoba; and,

3. The LSA was aware of these regulatory proceedings, and had delegated the conduct of them to the LSM pursuant to the *NMA*.

On the basis of these representations, the Panel was satisfied that it had jurisdiction to deal with the matters which are the subject-matter of these proceedings.

10. Carpay executed a "Statement of Agreed Facts and Joint Submission" on August 18, 2023 ("Exhibit 1"), and Cameron executed a similar but separate document on August 17, 2023 ("Exhibit 2"). They both agreed that the facts and other admissions set out in those statements constituted formal admissions.

11. All parties agreed to the joint hearing, and agreed further that it would be acceptable and appropriate for the Panel to render one written decision dealing with both Citations.

12. The Panel is indebted to all counsel for their cooperation in coming before it with comprehensive statements of agreed facts and for their thoughtful, balanced, and compelling submissions.

Pleas

13. Carpay entered a guilty plea to Count 3 of the Carpay Citation, and the LSM then stayed Counts 1 and 2. He agreed that the conduct to which he had pled guilty constituted conduct unbecoming a lawyer.

14. Cameron entered a guilty plea to the one count in the Cameron Citation. He agreed that the conduct to which he had pled guilty constituted professional misconduct.

Joint Submissions

15. The joint submission on behalf of Carpay requested that this Panel dispose of the matters by finding that his conduct, as detailed in Count 1 of the Carpay Citation and in his Statement of Agreed Facts, constituted conduct unbecoming a lawyer, and by ordering that he:

    (d) be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

    (e) pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

16. The joint submission on behalf of Cameron requested that this Panel dispose of the matters by finding that his conduct, as detailed in the Cameron Citation and in his Statement of Agreed Facts, constituted professional misconduct, and by ordering that he:

1. be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

2. pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

17. The Panel heard submissions from Ms. Klein (for the ISM), Mr. Simmonds (for Carpay), and Mr. Steigerwald (for Cameron), and it permitted Mr. Carpay to read into the record a personal statement of apology to the individuals and entities affected by his conduct.

18. The Panel adjourned to consider the submissions then returned to advise, on the record, that it had resolved to accept both joint submissions, with written reasons to follow. These are those reasons.

Statements of Agreed Facts

19. Many of the provisions of Exhibits 1 and 2 (the two Statements of Agreed Facts) are identical, or nearly so. Except where otherwise indicated, the facts set out below have been expressly agreed to by both Carpay and Cameron.

20. At all relevant times, both Carpay and Cameron:

1. met the temporary mobility requirements under the *NMA*;

2. were entitled to engage in the practice of law in or with respect to the law of Manitoba subject to the temporary mobility terms and conditions of the *NMA*;

3. did so engage in the practice of law in or with respect to the law of Manitoba under those temporary mobility provisions; and,

4. while so engaged, were required to comply with the applicable legislation, regulations, rules, and standards of professional conduct of Manitoba.

21. Carpay founded the Justice Centre for Constitutional Freedoms (the "JCCF") in 2010. At all material times:

1. Carpay was the President of the JCCF;

2. Cameron was its Director of Litigation; and,

3. both were employed by it in their capacities as lawyers.

22. The JCCF describes itself on its website as "a Canadian legal organization and federally registered charity that defends the constitutional freedoms of Canadians, through *pro bono* legal representation and by educating Canadians about the free society".

23. In 2020, the JCCF undertook to fund the Applicants in the Gateway case in a proceeding which challenged the constitutional validity of public health restrictions imposed by the government of Manitoba and, in particular, by its Provincial Health Officers, in response to the COVID-19 pandemic. The Applicants were three individuals and seven religious organizations; the Respondents included the provincial government and MIO of its senior Provincial Health Officers. Carpay assigned conduct of the matter to Cameron and two other lawyers whose conduct is not under review in these proceedings.

24. A ten-day contested hearing before Chief Justice Glenn Joyal of the (then) Manitoba Court of Queen's Bench concluded on May 14, 2021, at which time he reserved his decision and adjourned the matter until such time as he was ready to deliver judgment. The decision remained on reserve until October 29, 2021.

25. On June 8, 2021, Cameron sent two emails to Carpay. Cameron had received unverified information that some notable government representatives in both Manitoba and Alberta may have been observed breaking public health orders.

26. In the first email, Cameron proposed hiring private investigators "to get pictures of a few key people breaking health orders", and using any proof of officials breaching the public health restrictions in an Affidavit to potentially support an argument that the orders were arbitrary. He described the proposed surveillance as a "legitimate litigation expense".

27. In the second email, Cameron wrote: "I'd like to add CJC (*sic*) Joyal to that list."

28. In early June, 2021, Carpay proceeded to hire a local private investigation firm to conduct passive covert surveillance of the then Premier of Manitoba and the Chief Provincial Health Officer with a view to obtaining information concerning their compliance with the public health orders which were then in place.

29. Carpay later explained (during court proceedings on July 12, 2021, described in more detail below) that the position of the JCCF on this issue was that "the public has a right to know whether or not government officials are complying with public health orders. [...] We believe that the surveillance and observation of public officials is legitimate and legal."

30. Cameron did not have any direct communication with the private investigator ("the PI") until July 9, 2021 (described in more detail below).

31. In an email to the PI dated June 16, 2021, Carpay wrote: "I suggest you commence surveillance of Premier Pallister to catch him breaking rules, and further watch Chief Justice Glenn Joyal of the Manitoba Court of Queen's Bench." No other judges or justice system participants were placed under surveillance.

32. On June 28, 2021, Carpay received an email from the PI with an attached document reporting on the progress of the surveillance up to that time, The report (which was not in the materials provided to the Panel) indicated that Chief Justice Joyal had been observed riding in a car with an unidentified adult female and that neither was wearing a mask.

33. The following day (June 29, 2021), several emails were exchanged between Carpay and the PI. The relevant portions of the email exchange read:

    1. Carpay (11:20 AM): "[Cameron] and I are of the view that Joyal could be in violation of the rules if the female that he was with was not his wife (or person resident in his household). What would be ways of finding out her identify? As for further surveillance, likely best to put a stop to it for now, unless you have good reasons for suggesting continuation."

    2. PI (11:29 AM): "With regards to Joyal I would say that she isn't part of his household and we can see what we can do to find out her identify. If anymore would be needed on him it would be better to do afternoon/evenings during the week. We can see if he keeps driving people after work as well that way. He probably goes to the lake every weekend so we wouldn't be able to get much if he's there."

    3. Carpay (11:44 AM): "Would you be so kind as to copy [Cameron] on your emails to me? He is our Litigation Director, and we are making decisions together. If we don't know for sure that the woman is not part of Joyal's residence, we need to get confirmation. No point in turning this over to the media if this judge has a good, compelling, persuasive justification for traveling in the car with her. We need to have our ducks lined up ahead of time, so to speak." (Emphasis added.)

    4. PI (12:31 PM): "Ok thanks will do. We will try and see who she is. Like I said it may be a good idea to put a few hours on the judge next week after work and see if he has the same routine taking the female home."

34. On July 6, 2021, several more emails were exchanged between Carpay and the PI. The relevant portions of that email exchange read:

1. Carpay (12:57 AM): "Please do get info on the un-masked female that he was with, especially if it was contrary to the rules to drive in a car with a stranger not living in your own household. *Info on the female would be valuable and appreciated.*" (Emphasis added.)

2. PI (8:16 AM): "Ok thanks John. I had a guy set up this afternoon to go out to the judge for the next few afternoons/evenings is that still ok." (*sic*)

3. PI (9:27 AM): [Note: The text of this email was not reproduced in the evidence.]

4. Carpay (3:04 PM): "Yes, we can do some more surveillance on Joyal. However, please make it a top priority to find out the identity of the woman he was with ... this could be extremely valuable if he broke the rules." (Emphasis added.)

5. PI (3:23 PM): "Yes we are trying to find that out and see what we can get. We will see what more we can get on him [Chief Justice Joyal] over the next few afternoon/evenings".

35. The final email in evidence was sent from the PI to Carpay at 10:52 PM on July 8, 2021, after the Winnipeg Police Service discovered his firm had had Chief Justice Joyal under surveillance. It reads: "John can you give me a call back tomorrow morning- Friday. Need to discuss surveillance on the Judge we were on as he picked up on surveillance so I want to clear a couple things with you before discussing any more with the Police about the issue."

36. Cameron spoke with the PI twice (by telephone) the following day (July 9, 2021). Carpay has no knowledge of the contents of those conversations and neither admits nor denies what the parties to those conversations allege.

37. Cameron says that he called the PI directly as he had been unable to reach Carpay. He says that this was the first time he had spoken to the PI. Cameron told the PI to cease all surveillance and "delete everything", including all correspondence between the PI and Carpay. He said that he had spoken to Carpay and that Carpay had directed those instructions. Cameron also conveyed a request from Carpay that the PI not divulge to the police who had hired his firm to conduct the surveillance of Chief Justice Joyal.

38. On July 12, 2021, the Chief Justice Joyal convened a court hearing involving almost all of the counsel who had appeared on the Gateway matter (two being unavailable); all counsel, including Carpay and Cameron, attended by video. Several journalists and members of the public also attended in the same manner. What transpired during that hearing is set out in more detail below under the heading "Court Proceedings on July 12, 2021".

39. A request by Cameron to go *in camera* was, after some discussion, granted by the Chief Justice. While in camera, Carpay revealed to the Court, for the first time, that he had retained the PI on behalf of JCCF in order to determine whether government officials were complying with public health orders; he stated that the surveillance had "nothing to do with the [still pending *Gateway*] litigation". Carpay stated further that the surveillance was not "targeted" at the Chief Justice.

40. During both the *in camera* session and the public session which followed, Cameron failed to comment or provide correction when Carpay asserted to the Court that the use of the information uncovered by the surveillance had "nothing to do with the litigation" and other comments to that effect.

41. While in camera, Cameron was asked directly whether he knew about the surveillance of the Chief Justice. He initially answered that he "had some inkling" but was "not privy to the.. instructions that were provided. I was not privy to the retainer."

42. When asked whether he became aware of the surveillance, Cameron answered that he "became aware of it to some extent, uh, later on", and that he "was not involved at the outset, as far as the retainer'.

43. Cameron was then asked by the Chief Justice: 'When did you find out [about the surveillance of him]?" Cameron initially said that he “would have to go back and look at my notes", but the Chief Justice pressed for a more definite time frame. Eventually, Cameron stated: "I've known for at least a couple weeks, my Lord. Um, so I-I, uh, at least I, I mean here I am, here I am saying that it's been a couple of weeks. To be honest with you, I would have to go back and look. Uh, it's, uh, I'm not sure....

44. After the Court went back on the public record, the Chief Justice provided an overview of the circumstances; he described the involvement of Cameron as follows:

> “… the organization that Mr. Carpay represents and Mr. Carpay hired the private investigator to conduct the surveillance of me as a so-called public figure. And Mr. Cameron, as counsel for the applicant, was not party to the retainer but became aware of it a couple of weeks ago."

45. Again, Cameron did not comment or provide correction to this timeline.

46. Both during the in camera session and after the Court went back on the public record, Cameron and Carpay each apologized to the Chief Justice. On both occasions, the Chief Justice acknowledged and accepted the apologies. Cameron further stated to the Chief Justice that he would never attempt to intimidate a member of the judiciary, nor to influence the outcome of any decision of the Court in any case.

47. In his reply to a letter from the LSM seeking his response to the allegations against him, Cameron denied responsibility for and involvement in the decision to commence surveillance on the Chief Justice. He repeated his claim that he had learned of the surveillance approximately two weeks prior to the July 12, 2021 court appearance.

48. At some point after July 13, 2021, Cameron deleted the entire contents of his Outlook mailboxes (including the Inbox, the Sent Items, and the Deleted Items), which included all of the communications with the PI. [Note: While this same admission is found in his own Statement of Agreed Facts, Carpay — through his counsel — explained that these particular deletions were part of a massive purging of "tens of thousands" of emails which he and others at JCCF had undertaken in response to a suspected hack of their email system. The Panel was also advised that the email communications between Carpay and the PI were ultimately recovered and disclosed to the LSM in furtherance of its investigation.]

The Court Proceedings on July 12, 2021

49. The opening monologue by the Chief Justice includes the following remarks:

    1. "I am currently working on my reasons for decision respecting the administrative and constitutional challenge brought by the applicants in the present case."

    2. "On July 8th, 2021, last week, after having left the Manitoba Law Courts building parkade, and while driving around the City of Winnipeg to do various errands, I discovered that I was being followed by a vehicle, a vehicle that I did not recognize. I have since learned that I was being followed by someone who was working for a private investigation agency. The private investigation agency was apparently hired by a person or persons for the clear purpose of gathering what was hoped would be potentially embarrassing information in relation to my compliance with COVID public health restrictions."

    3. "The City of Winnipeg Police Service was called in, as was the Government of Manitoba's internal security and intelligence unit. I am told that the investigation is ongoing but the nature of the private investigation agency's retainer, that retainer has been confirmed. The agency was indeed hired by a person or persons or organization to follow me for the purposes of surveilling — surveilling me for any non-compliance with COVID-19 health restrictions."

    4. "… [T]o date the private investigation agency has not disclosed who hired them to conduct this surveillance clearly designed for the purpose of gathering potential information that might embarrass me in respect of any potential non-compliance with public health restrictions."

5. "… [T]he situation I have just described raises the spectre of potential intimidation and it can also give rise to possible speculation about obstruction of justice, direct or indirect. …I am deeply concerned and troubled that this type of private investigative surveillance and conduct could or would be used in any case, in any case involving any presiding judge in a high profiled adjudication." (Emphasis added

6. "…If we are now in an era where a sitting judge, in the middle of a case, can have his or her privacy compromised as part of an attempt to gather information intended to embarrass him or her and perhaps even attempt to influence or shape a legal outcome, then we are indeed in uncharted waters."

7. I assume unhesitatingly that no party in this case had anything to do with the private investigation that I have described, directly or indirectly. For the purpose of this case, nothing about the information with which I am now in possession in any way will influence me or prevent me from impartially assessing the evidence and conducting the necessary analysis that I must conduct to make the determination I am required to make to decide the administrative and constitutional issues in this case."

50. After hearing brief comments first from Cameron and then from counsel for the Government of Manitoba, the Chief Justice invited further submissions from Cameron on the issue of his request that the proceeding go *in camera*. Cameron replied: "My Lord, there are three reasons specifically. Client confidentiality needs to be protected. The administration of justice, as you've said, needs to be protected. This is not necessarily a matter for which the public as a right to — to know about. I think that would — should be up to Your Lordship after you have heard in-camera proceedings. And also, My Lord, there are professional implications to how we would address the Court and what we would say to the Court. And so we're asking — we're asking on this motion to go in-camera for those reasons, My Lord."

51. The public portion of the hearing was then adjourned and a 31-minute in camera session took place. During this session, there were several tense exchanges between Chief Justice Joyal and both Carpay and Cameron. The incredulity and dismay with which the Chief Justice responded to the revelation that it was the two JCCF lawyers who had arranged the surveillance of him, and to their stated justifications for having embarked on such an endeavour, is manifestly evident from the transcript.

52. The public hearing concluded with Chief Justice Joyal agreeing, with the consent of counsel for all of the litigants, to continue with the task of writing his decision in the Gateway case.

53. On October 29, 2021, Chief Justice Joyal delivered Reasons for Judgment dismissing the application, and upholding the constitutional and legal validity of the impugned public health restrictions. In supplementary Reasons delivered on February 1, 2022, the Chief Justice declined to order costs against the Applicants. An appeal to the Manitoba Court of Appeal was dismissed by that Court on June 19, 2023.

Relevant Statutory & Other Provisions

54. *Federation of Law Societies of Canada — National Mobility Agreement*, 2013 Clauses 1 ("disciplinary record"), 1 1 (d), (e), & (f), 14, 27, 28, & 29

The Legal Profession Act ("the *Act*")
Sections 3(1), 3(2), 64(1), & 72(1)(e) & (k)

Code of Professional Conduct
Rule 2.1-1 and Commentary [2] & [3]

Law Society Rules
Rules 3-62(1 3-64(1), 3-70(5), & 5-96(7)

The full texts of these provisions are attached as Appendix "C" to these Reasons.

Relevant Authorities and Principles

55. The LSM provided a Book of Authorities in advance of the hearing. The applicable law with respect to determining an appropriate sanction in cases of serious professional misconduct is reasonably well-settled, as is the law with respect to joint submissions for resolution. For present purposes, it will only be necessary to cite a few of the many authorities which have been brought to the attention of the Panel in this and other LSM discipline matters.

General Principles of Professional Discipline

56. The Panel is indebted to prior Discipline Panels of the LSM which have articulated the principles applicable to cases similar to this one. These principles (in no particular order of importance) include the following:

1. The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

   (The Law Society of Manitoba v Nadeau, 2013 MBLS 4, citing Lawyers & Ethics: Professional Responsibility and Discipline, Gavin McKenzie, Carswell 2012)

2. The discipline hearing panel focuses on the offence rather than the offender, and considers the desirability of parity and proportionality in sanctions, and the need for deterrence. ... The panel also considers ... aggravating and mitigating factors [which] include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state.

   (Nadeau, citing Lawyers & Ethics: Professional Responsibility and Discipline)

3. Other relevant considerations (derived from the list of so-called "Ogilvy' factors) include: (a) the nature and gravity of the conduct proven; (b) the age and experience of the respondent; (c) the previous character of the respondent, including details of prior disciplines; (d) the impact upon the victim; ... (g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; . (h) the impact on the respondent of criminal or other sanctions or penalties; . . (j) the impact of the proposed penalty on the respondent; (k) the need for specific and general deterrence; (l) the need to ensure the public's confidence in the integrity of the profession; and (m) the range of penalties imposed in similar cases.

   (Nadeau)

4. After a guilty plea or following conviction, a Panel may consider whether the offending member has admitted guilt and expressed remorse, not for the purpose of imposing a higher penalty but for the purpose of considering whether leniency should be applied.

5. Integrity is the foundation of the legal profession. It is first rule in the Code and every other rule reflects it. Clients and the courts must have faith that lawyers are totally trustworthy.

   (The Law Society of Manitoba v McKinnon, 2010 MBLS 5)

6. [T]here is a distinction between circumstances mitigating the misconduct which directly address why a member committed an offence (and hence the degree of perceived culpability) and factors offered in mitigation that arose or were exacerbated by the offence and the adjudicative process that followed or are simply incidental. For example, a distinguished career, embarrassment, and a guilty plea are all commonly offered as "mitigating factors". An assessment of the nature of a mitigating factor (i.e. whether a factor offered in mitigation relates to why the offence was committed, or relates to a consequence of having

committed the offence or is just incidental) is necessary to properly weigh its impact on an appropriate disposition.

(MacIver)

7. While it is never appropriate to impose a penalty with the desire to publicly humiliate a member, stigma resulting from the imposition of a proper penalty is generally an unavoidable byproduct of a lawyer's misconduct.

(MacIver)

8. Revocation of a lawyer's entitlement to practise is the most severe penalty that can be imposed as professional discipline. It ends the lawyer's career and hence removes the risk of harm to the public. The penalty sends a message to the public at large and to the legal community that the relevant professional conduct is condemned by the Law Society and by the legal profession.
(The Law Society of Upper Canada v Ronen, 2017 ONLSTH 89)

Joint Submissions

57. A discipline panel should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

58. To be contrary to the public interest means the joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the [professional discipline process]".

59. "Rejection denotes a 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 function of the [professional discipline process] had broken down. This is an undeniably high threshold — and for good reason."
(Law Society of Manitoba v Sullivan, 2018 MBLS 9, citing *Anthony-Cook v Her Majesty the Queen*, 2016 SCC 43)

Submission on Behalf of the LSM

60. Ms. Klein canvassed the general principles of professional discipline and the settled law with respect to joint submissions. She noted the salient admissions in each of the Statements of Agreed Facts, and invited the Panel to draw the inference that both

Cameron and Carpay responded to questions from the Chief Justice at the July 12, 2021 court hearing in a manner that lacked both candour and integrity.

61. She argued that there were a number of aggravating factors in play, the most significant of which were the demonstrable breaches of the duty of integrity exhibited by both lawyers. She asserted that their actions brought the administration of justice into disrepute, and tarnished the reputation of the legal profession as a whole.

62. Ms. Klein acknowledged that there were mitigating factors as well, not the least of which were the guilty pleas, the good faith negotiation of joint submissions, and the absence of any prior discipline record for either party. She noted that the proposed resolution would result in a permanent record of the misconduct of each of the parties that would follow them for the rest of their legal careers, regardless of where in Canada they choose to practise.

63. Speaking in support of the joint submission, Ms. Klein noted the egregious and, indeed, "unprecedented" nature of the misconduct, and submitted that the proposed resolution is a significant and appropriate penalty which adequately protects the public. It is, in fact, the most serious sanction open to the Panel to impose in light of the fact that neither lawyer is a member of the LSM. Further, it is debatable whether the LSM even has the authority to strike the names of the lawyers from the rolls of another law society, in this case the LSA

64. She urged the Panel to accept the joint submissions and to take the opportunity to impress upon both the public and the profession that there can be no tolerance for the type of conduct in which these parties engaged.

Submission on Behalf of Carpay

65. Mr. Simmonds described the actions of his client as "foolhardy, misguided, and inappropriate". He reiterated the position of Carpay that there was never any intention to interfere with the *Gateway* proceeding, nor to influence in any way its ultimate result. He did take issue with the position of LSM counsel that the permanent prohibition on any future practice in Manitoba amounted to a "*de facto* disbarment".

66. He noted that this misconduct occurred at a time when the country, and indeed the world, was in the throes of a crippling pandemic which had prompted many governments in Canada and elsewhere to impose severe constraints on the types of fundamental rights and privileges that many Canadians had come to take for granted. These measures were controversial and divisive. For someone like Carpay, who had spent his career advocating for governmental respect for the individual rights enshrined in the *Canadian Charter of Rights and Freedoms*, and educating the public and his clients with respect to those rights, this was an especially difficult time.

67. Speaking in support of the joint submission, Mr. Simmonds argued that the proposed resolution is an onerous one which appropriately reflects the severity of the impugned conduct. Carpay is still facing criminal charges in Manitoba, and could potentially face disciplinary proceedings before the LSA Accordingly, the resolution of these proceedings (and presumably the criminal charges) will have far-reaching and long-term impacts on Carpay. He has, for many years, had a pan-Canadian legal practice; his ability to practise outside of his home jurisdiction of Alberta will now be seriously curtailed by the *NMA* requirement that he apply for a temporary mobility permit in every other host jurisdiction where he wishes to work, and to advise each of those host governing bodies of this disciplinary record in Manitoba.

Submission on Behalf of Cameron

68. Mr. Steigerwald endorsed the submissions of Mr. Simmonds and also spoke in support of the joint submission.

69. With respect to the deletion of the PI emails and reports, Mr. Steigerwald reiterated that those materials were not "selectively deleted" and that those actions were taken by Cameron and other JCCF personnel to protect their email information generally from hackers.

70. He argued that the surveillance which was undertaken was not intended to gather evidence for use in the *Gateway* matter, nor to intimidate the Chief Justice or to influence the decision in the case, but rather to be potentially used to embarrass public officials or perhaps provide support for a future court argument that the measures being challenged were "arbitrary" and, therefore, in breach of the *Charter*. He nevertheless acknowledged that his client had failed to recognize the distinct constitutional protections afforded to judges in Canada, and had failed to appreciate their obligation to fulfill their roles independently of outside influences.

71. Mr. Steigerwald noted that Cameron had specifically denied early knowledge of the details of the *retainer* of the PI, and of the actual commencement of the surveillance of the Chief Justice. He conceded that Cameron should have been "more candid" with the Chief Justice during the court proceedings, especially because it was so obvious that he specifically wanted to know whether any surveillance had taken place while the hearing itself was still in progress.

72. In terms of mitigating factors, Mr. Steigerwald argued that:

    1. Cameron is a sole practitioner whose practice is "not very active" and that he no longer has any active cases with the JCCF;

2. he is still facing criminal charges in Manitoba and may potentially face professional discipline in Alberta;

3. he is 45 and has no source of income beyond his law practice with which to support himself and his family;

4. at the time of the misconduct, he was heavily involved with COVID-19 litigation on behalf of individuals whose rights were being severely restricted and who were looking to the legal system for redress such that the stress of this work contributed to his poor judgment in the Manitoba litigation;

5. while Cameron has no prior discipline history, his professional reputation has been "irreparably tarnished",

6. his ability to practise will be severely impacted by the penalty being proposed; and,

7. he has pled guilty to the Cameron Citation and has accepted responsibility for his conduct.

Reply on Behalf of the I-SM

73. Ms. Klein submitted that the *Gateway* case was not "over" when the surveillance of the presiding judge was undertaken; the judge still had his decision on reserve and could not yet be considered *functus officio*. Further, the *King's Bench Rules* specifically contemplate the re-opening of a concluded proceeding, prior to judgment being rendered, to receive new and relevant evidence, or to consider a new and binding authority issued while the decision remained under reserve.

74. With respect to expressed lack of nefarious intentions regarding the use to be made of the results of the surveillance, she noted that the emails reproduced in the materials are the "best evidence" of the intentions of the parties and that it was open to the Panel to draw appropriate inferences from those emails. In particular, Ms. Klein noted the characterization of the proposed surveillance by Cameron as a "legitimate litigation expense".

Analysis

75. Counsel for the LSM advised the Panel that the proposed bans were "the most severe penalty open to the Panel to impose". The Panel was advised that because Carpay and Cameron were, at the relevant times, "visiting lawyers" pursuant to the NMA and not "members" of the LSM , it was not open to the Panel to make an order of disbarment

with respect to either of them; only their home governing body — the LSA — can do that.

76. The central issue here is whether the proposed sanction is appropriate in the circumstances; whether the misconduct proven (and, indeed, expressly admitted) warrants the punishment to be imposed pursuant to the joint submission.

77. The starting point for the analysis is, therefore, the conduct itself. The conduct in question consists of elements. First, the recommendation, decision, and act of hiring a private investigator to spy on the Chief Justice while he had on reserve a decision on the constitutional validity of health orders with a view to observing him violating those same health orders. And secondly, when asked directly in court by the Chief Justice about the surveillance, failing to state forthrightly and precisely who had recommended the surveillance, and for what purpose, so far as the Chief Justice and the courts were concerned.

78. This case may well be one of first instance. The Panel was not referred to any authority from any Canadian law society where the conduct under scrutiny involved the covert surveillance of a sitting judge, let alone a judge who had presided over a matter where the hearing had concluded but the judgment had yet to be rendered.

79. At the extraordinary hearing before Chief Justice Joyal on July 12, 2021, during both the public and *in camera* sessions, Carpay repeatedly characterized his conduct as an "error in judgment". It was more than that. As his counsel said, it was "stupid".

> Even as understatements go, this self-characterization of the impugned conduct was an astonishing one; rather akin to describing the sinking of the Titanic as "an unfortunate boating accident".

80. While Carpay and Cameron both disclaim any *intention* to "target" or intimidate the Chief Justice, or to influence the outcome of the judicial matter of which he was seized at the time when the covert surveillance of him was undertaken, those stated intentions are, in our view, not determinative. There remains an inescapable *perception* that the integrity of the administration of justice was put at serious risk by the conduct of these two lawyers such that a reasonably informed member of the public could be justifiably concerned that the course of justice in the case had been if not subverted, at the very least adversely affected.

81. If the results of the surveillance were really *not* intended to be filed in the *Gateway* matter, one might legitimately ask (as the Chair of the Panel did): "What, then, would be the purpose of gathering this new evidence?" and "Where *would* the anticipated Affidavit (containing a description of the surveillance) be filed if not in the *Gateway* matter?"

82. The Panel finds the rather unsatisfactory explanations put forward by the parties to be unconvincing. It was suggested that had the Chief Justice been observed violating the health restrictions, the evidence of this violation would not have been released until after he had rendered his decision. But surely, if this was the "grand plan", doing so would serve to seriously discredit as hypocritical and derisory any decision that upheld the health restrictions. Alternatively, it was suggested that any evidence of the Chief Justice violating the health restrictions may have been used in a future challenge of those restrictions as an illustration that those who make or enforce such restrictions felt at liberty to ignore them personally and hence must not be persuaded that they are truly necessary.

83. Notwithstanding the alternative explanations offered by Carpay and Cameron for including Chief Justice Joyal on the list of the subjects of their covert surveillance, the Panel concurs with counsel for the LSM that one ought to infer that both parties meant exactly what they said in their email communications on June 8, 2021, June 16, 2021, June 29, 2021, and July 6, 2021. In spite of their protestations to the contrary, it does appear that in June, 2021 , the two lawyers fervently hoped to secure evidence that "public figures", namely the Premier of the province and the Chief Medical Officer (who had testified at the hearing in May, 2021), were violating the very health orders under review, and that such violations, if they were observed, would be somehow even more compelling if the very judge reviewing the health orders was also seen violating those same orders.

84. The Panel notes in passing that while Carpay spoke of his extreme consternation upon learning that the PI had made direct contact with at least one member of the Joyal household, there is no evidence before this Panel that such contact was (as he asserts) expressly prohibited by the terms of the retainer with the agency. The emails in which Carpay urgently exhorts the PI to determine the identity of the “un-masked female" contain no such prohibition, and one is hard-pressed to imagine how that particular objective could have been achieved without some direct contact with *somebody* close to the Chief Justice.

85. The Panel finds the following statements by Cameron during the court proceedings of July 12, 2021 were blatantly and intentionally false:

    1. that the Chief Justice was not "targeted" for surveillance (when clearly he was);

    2. that Cameron himself had not been involved at the outset in the decision to include the Chief Justice on the list of those who were to be put under covert surveillance (when it was he who wrote: "I'd like to add CJC Joyal to that list"); and,

3. that he had only been aware of the surveillance 'for a couple of weeks" at the time of the hearing (when he was a party to an email discussion with Carpay on June 8, 2021, more than a month earlier), and that he did not read an email of June 16, 2021 which indicated that the Chief Justice was now to become the subject of surveillance.

4. His assertion to the effect that he was unaware of the particulars of the retainer of the PI may have been technically correct, but that statement was undoubtedly misleading and, the Panel believes, intentionally so. A half truth can be, after all, as damaging as a complete lie, and thus indistinguishable from a total fabrication.

86. While the wholesale purging (and subsequent recovery) of their JCCF Outlook accounts by both Carpay and Cameron may have been justified to shield their content from outside hackers, the directives from Cameron to the PI to "delete everything" that he had regarding the surveillance of the Chief Justice, including all correspondence between the agency and Carpay, and to refrain from telling the police who had hired him, cannot reasonably be seen as anything other than a deliberate attempt to conceal the misconduct from the police, the courts, and the regulators. If the intention of the surveillance had been simply to secure evidence that "public figures", such as the Premier and the Chief Medical Officer, were violating health orders, one would think that there would be no need to instruct the PI to "delete everything". If that were really the case, there would be no concern about disclosing to the police that the JCCF was involved as part of its mandate of keeping watch on the public behaviour of "public figures".

87. With respect to the *Ogilvy* factors listed in Para. 56(c), the Panel notes that:

1. The seriousness and gravity of the misconduct in this case can hardly be overstated. Integrity is the very foundation of the conduct which the public and all of the participants in the justice system have a right to expect from every person who practises law in Manitoba. When that trust is broken, it is a very serious matter. If lawyers and litigants (or even strangers to the litigation) start spying on judges hearing the cases in which they are involved (or otherwise interested in) with a view, however muddled or "stupid" , that something might turn up that will aid them in securing a favourable outcome to the litigation, the judicial system will be sorely discredited. Judges rely daily on the answers lawyers give them to questions about clients, witnesses, relevant case law, relevant evidence, process, and the like. If lawyers are to be permitted to answer those questions with "half truths", with less than full candour, or with lies where the answers may tend to embarrass the lawyer, then the judicial system itself will be severely impaired.

2. Neither lawyer was new to the practice of law; Carpay had been practising for 22 years and Cameron for 13 years when the misconduct occurred. Youth and inexperience do not come into play with respect to the conduct of these two lawyers.

3. However, neither lawyer has any prior professional discipline history and this does merit some favourable consideration.

4. No person likes to be spied upon and in some instances, that spying amounts to "stalking" which leads to a tragic outcome. While no direct evidence was presented to the Panel regarding the impact of the surveillance on the Chief Justice and his family other than his few short comments during the *in camera* proceedings of July 12, 2021, the Panel acknowledges that there must have been some consternation in the moment when it came to the notice of the Chief Justice that he was being followed. Judges are not "public figures" in their private lives, and outside of their jobs, they are as entitled as any other private citizen to peace and quiet, and to "freedom from unwanted surveillance".

5. Both lawyers offered an apology to the Chief Justice during the in camera session on July 12, 2021, and both repeated it when the public session resumed. The Chief Justice accepted the apologies in open court. Carpay also wrote a letter of apology to the Chief Justice soon after his decision in the Gateway case had been released, and he reiterated his remorse in the personal statement which he read at the discipline hearing on August 21, 2023. Apologies matter and it is to the credit of both Carpay and Cameron that they did apologize at an early date. It is important to this Panel that the

6. Chief Justice accepted the apologies, albeit with the observation that both lawyers would have to answer for their conduct in due course.

7. Both lawyers are still facing criminal charges in Manitoba; the Panel was told that those charges are expected to be resolved shortly, with consequences to each of them that will be onerous. They may also face further professional disciplinary proceedings in their home jurisdiction of Alberta, although none have yet been initiated by the LSA While the fact that there are other proceedings arising from the same facts is of note, we do not find that this makes the joint recommendations either more, or less, suitable. As stated, the Society says that the penalties proposed are the most serious that are available to us.

8. The Panel was told that the impact on both parties has already been significant. Their ability to practise outside of Alberta has been severely curtailed, their professional reputations are in tatters, and — in the specific case of Cameron — what remains of his once-robust practice is minimal.

9. We do not believe that either Carpay or Cameron will ever again hire a private investigator to conduct surveillance on a sitting judge. Further, we do not believe that the vast majority of lawyers practising in Manitoba and, indeed, in Canada, would ever contemplate doing so. However, as a warning to the few who might consider engaging in similar conduct, we condemn in the strongest possible terms the conduct which Carpay and Cameron admit was improper and unethical.

   Lest there be any doubt on this point, what the Panel is saying is this: It is unacceptable for a lawyer, any lawyer, to arrange for— or even condone — the covert surveillance of a sitting judge, any sitting judge, under any circumstances, or for any purpose whatsoever. Full stop. No exceptions. The independence of the judiciary and the integrity of the administration of justice are simply too important to the rule of law to be jeopardized by such conduct.

10. While the reputation of the legal profession was undoubtedly tarnished by this sorry affair, we hope that the manner in which the matter was resolved by the LSM, the lawyers, and their counsel will go a long way to restoring and maintaining public confidence in the ability of the LSM to effectively regulate lawyers in the public interest.

88. Taking all of the above factors into account, the Panel is satisfied that the proposed sanction is an appropriate one and it has no hesitation in accepting the joint submissions.

Final Comments

89. Democracy in Canada can be a fragile institution at times, and it is supported by several pillars which are by no means unassailable. One of those pillars is an independent judiciary, and those who fulfill the important role of a judge must be free to perform their duties "without fear or favour" from any outside influence. In particular, courts should not be subject to improper influence from the other branches of government or from private or partisan interests.

90. The website of the Canadian Judicial Council has this to say about "judicial independence":

> A fundamental principle is [that] at the heart of the Canadian judicial system is its *independence*. The "separation of powers" guarantees Canadians that the legislative, executive and judicial powers in Canada will be autonomous and independent of each other. The legislature defines the law, the government ensures its application and the courts interpret it.

> When a dispute is brought before the courts, both parties must be convinced that the judge will render a decision based only on the law and the evidence submitted. Judges must be completely impervious to any outside influence, whether governmental, political, family, organizational or other.
>
> In short, judicial independence is essential for Canadians to have confidence in their justice system. We must be convinced that the judge will render a decision based on his or her conscience, in full respect of the oath of allegiance taken when the judge was appointed.

91. Judges must have no fear of being subjected to harassment or physical harm when they are sitting on controversial cases. These cases must be adjudicated in the environment of a fair and impartial judicial process, and society simply cannot tolerate having judges shying away from making unpopular (yet still necessary and legally sound) decisions because of concerns for their personal safety or the safety of those close to them. The harassment of one judge is a psychological threat to all judges, and cannot be tolerated in a free and democratic society.

92. It is not too strong a statement to say that judicial independence came under attack on June 8, 2021 when Carpay and Cameron first conspired to gather potentially embarrassing evidence on the private activities of one of the most high-profile members of the Manitoba judiciary, and then again on July 12, 2021 when they actively misled the court during a hearing when their misconduct first came under scrutiny.

93. But while the principle can be a fragile one, it is also resilient. In the end result, the justice system worked as intended, and the Gateway case was concluded in a manner which respected judicial independence and upheld the rule of law.

Disposition

94. The Panel orders that:

1. Carpay be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba;

2. Cameron be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

3. They each pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

DATED this 15th day of September, 2023.