

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF AN APPEAL
REGARDING JONATHAN DENIS, KC
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Appeal to the Benchers Panel

Kelsey Meyer, KC – Chair and Bencher
Stephanie Dobson, KC - Bencher
Adam Drew, KC - Bencher
Afshan Naveed, KC - Bencher
Mary Ellen Neilson – Lay Bencher
Sandra Petersson, KC - Bencher
Erin Runnalls, KC - Bencher
Louise Wasylenko – Lay Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Alain Hepner, KC – Counsel for Jonathan Denis, KC

Hearing Date

October 28, 2025

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

Overview

1. Jonathan Denis, KC has a litigation and government relations law practice in Calgary, Alberta. He practiced law from 2001 until he was elected as an MLA in 2008. In addition to other portfolios during his tenure as an MLA, he was appointed Solicitor General in 2011 and Justice Minister from 2012 to 2015. In 2015 he resumed his law practice.
2. On February 6 and 7, 2024 and April 18, 2024, a Hearing Committee convened a hearing into the conduct of Jonathan Denis, KC (Merits Hearing), based on two citations:
 - 1) It is alleged that Jonathan Denis, KC acted for R.M. while in a conflict of interest and that such conduct is deserving of sanction (Citation 1).

- 2) It is alleged that Jonathan Denis, KC threatened to make a complaint to a regulatory authority in an attempt to gain a benefit for his client, DL, and such conduct is deserving of sanction (Citation 2).
3. After the Merits Hearing concluded, counsel for Mr. Denis applied to re-open the hearing to allow fresh evidence to become part of the record in regard to Citation 2, specifically two emails from DN (the complainant) to DL and his wife, EL, respectively. The emails are both dated February 11, 2024. They post-date the Merits Hearing on February 6 and 7, 2024 and pre-date written and oral submissions and the decision of the Hearing Committee with respect to the merits of the citations against Mr. Denis.
4. For reasons set out in the Hearing Committee's decision dated September 6, 2024, the Hearing Committee found it would not be in the public interest to re-open the hearing to allow two emails dated February 11, 2024 to become part of the record, and denied the application.
5. The Hearing Committee found that Mr. Denis was guilty of both citations. The Hearing Committee's full decision and its reasons are detailed in its September 6, 2024 Hearing Committee Report (*Law Society of Alberta v Denis*, [2024 ABLS 19](#)) (Merits Decision).
6. A hearing on sanction was held on December 5, 2024, at which time a joint submission on sanction was presented to the Hearing Committee for a reprimand and a fine. The parties disagreed on the payment of costs.
7. The Hearing Committee accepted the joint submission on sanction at the hearing, and, in accordance with section 72 of the *Legal Profession Act* (*Act*) ordered a reprimand and a fine of \$5,000.00 (\$2,500.00 for each of the two citations) to be paid by February 28, 2025.
8. The Hearing Committee reserved its decision on costs. After reviewing the evidence and exhibits and hearing the arguments on behalf of the LSA and Mr. Denis, the Hearing Committee ordered that Mr. Denis pay costs of \$15,000.00 by April 30, 2025. The Hearing Committee's decision on sanction and costs and its reasons are detailed in its March 7, 2025 Hearing Report (*Law Society of Alberta v Denis*, [2025 ABLS 8](#)) (Sanction Decision).
9. Pursuant to section 75 of the *Act*, Mr. Denis appealed the Hearing Committee's findings.
10. Mr. Denis raised the following grounds for his appeal, as set out in his Written Appeal Submissions dated August 6, 2025 (Appeal Submissions):

- 1) With respect to Citation 1:

- i. The Hearing Committee erred in concluding the Member's due diligence and good faith would not inform the perception of the public in respect of the Member's conduct and was therefore irrelevant to the question of whether a Member's conduct was deserving of sanction.
- ii. The Hearing Committee erred in concluding actions taken by the Member after a breach were not relevant to the question of whether the Member's conduct (as a whole) was deserving of sanction.
- iii. The Hearing Committee erred in law making findings of fact unsupported by the evidence which affected its determination of whether the conduct relevant to Citation 1 was worthy of sanction, and specifically:
 - A. The finding that the Member preferred his own interests over his client's;
 - B. The finding that the Member continued to act despite knowing he was in a conflict;
 - C. The finding that the Member had received confidential information from SL's father in the form of an email attachment and that SL's father was the Member's client.

2) With respect to Citation 2:

- i. The Hearing Committee erred in finding that the cessation of criminal activity constituted a gain or civil benefit to the Member's client.
- ii. The Hearing Committee erred in denying the request to re-open the hearing.
- iii. "Sundry remaining issues". The Appeal Submissions state that the Hearing Committee "criticized the Member for "persist[ing] in deny[ing] of any wrongdoing or conduct deserving of sanction" (ignoring that the Member, with the benefit of some distance and hindsight, acknowledged that the first count did amount to a conflict)", asserting that this is contrary to the decision in *Charkhandeh v College of Dental Surgeons of Alberta*,¹ which states that raising a defence is not an aggravating factor.

3) With respect to the costs order of the Hearing Committee:

- i. The Hearing Committee erred in its costs decision.

¹ *Charkhandeh v College of Dental Surgeons of Alberta*, [2025 ABCA 258](#) [*Charkhandeh*] at para 98.

11. On October 28, 2025, a panel constituted for the purpose of hearing an Appeal to the Benchers (Appeal Panel) conducted a hearing on the appeal of Mr. Denis.
12. After reviewing the Merits Decision, the Sanction Decision and the hearing record, and considering the written and oral submissions on behalf of Mr. Denis and on behalf of the LSA, for the reasons set out below, the Appeal Panel confirms the Hearing Committee's finding of guilt on Citation 1 and Citation 2.
13. The Appeal Panel reduces the Hearing Committee's determination on hearing costs to \$10,000.00.
14. The Appeal Panel orders costs of the appeal to be paid by Mr. Denis, in the amount of \$3,500.00. Mr. Denis has one year from the date of this decision to pay all costs ordered.

Preliminary Matters

15. There were no objections to the constitution of the Appeal Panel or its jurisdiction, and a private hearing was not requested, so a public hearing on Mr. Denis's appeal proceeded.
16. LSA counsel noted that counsel for Mr. Denis had included fresh evidence with the Appeal Submissions on behalf of Mr. Denis but had not brought a motion to introduce fresh evidence. The fresh evidence in question was a transcript of a court hearing of a peace bond in relation to DN on September 12, 2024, after the Merits Decision had been issued (Peace Bond Transcript).
17. Counsel for Mr. Denis thus advanced a motion at the appeal hearing to admit the Peace Bond Transcript, submitting that it was relevant and significant, that it was not available during the Merits Hearing, and that if Mr. Denis had known of the peace bond, he would have raised it for consideration at the Merits Hearing. Counsel for Mr. Denis asserted that the Peace Bond Transcript was relevant to the credibility of DN.
18. LSA counsel responded that if she had actually received an application on behalf of Mr. Denis to admit new evidence, she would have made a cross-application to admit further context evidence. LSA counsel took the position that the Peace Bond Transcript was not relevant. She also noted that the Appeal Submissions of Mr. Denis also referenced two other records that were not in evidence before the Hearing Committee (a *Freedom of Information and Protection of Privacy* (FOIPP) request and an article from the Calgary Herald), there being no motion brought on behalf of Mr. Denis to admit the same.
19. The Appeal Panel, other than Mr. Drew, caucused to consider the motion to admit the Peace Bond Transcript and counsel's submissions regarding the same. As the Peace Bond Transcript involved submissions from Mr. Drew's colleague at Alberta Justice, Mr. Drew recused himself from the consideration of the motion.

20. The remainder of the Appeal Panel carefully considered the motion to admit the Peace Bond Transcript as new evidence, and determined not to grant the motion, for the following reasons:
- 1) The Peace Bond Transcript constituted new evidence that was not available at the time of the merits hearing (or at the time of issuance of the Merits Hearing Report).
 - 2) Regardless of that, the Peace Bond Transcript has no relevance whatsoever to the citations against Mr. Denis. Citation 2 against Mr. Denis is that Mr. Denis threatened to make a complaint to a regulatory authority, with respect to DN, in an attempt to gain a benefit for his client, DL, and such conduct is deserving of sanction. The communications of Mr. Denis in that regard constituted a letter from Mr. Denis to DN dated November 13, 2021 (marked as Exhibit 3 at the merits hearing) and email correspondence from Mr. Denis to DN dated December 9, 2021 (marked as Exhibit 5 at the merits hearing). Exhibits 3 and 5 were marked as exhibits and are in evidence. There is no assertion that Mr. Denis did not send the correspondence at Exhibits 3 and 5. The credibility of DN has no bearing upon whether Mr. Denis' communications in Exhibits 3 and 5 constitute threats to make a complaint about DN to a regulatory authority in an attempt to gain a benefit for his client, DL, or whether such conduct was deserving of sanction.
21. The Appeal Panel thus dismissed the motion to admit the Peace Bond Transcript. Having done so, the Appeal Panel determined to continue the hearing of the appeal as constituted (i.e., with Mr. Drew as a member of the Appeal Panel). No objection was raised to the Appeal Panel's decision to proceed in that regard.
22. The Appeal Panel noted that as it had not received (either prior to or during the appeal hearing) any application on behalf of Mr. Denis to admit the FOIPP request or the Calgary Herald article as new evidence for consideration on the appeal, the Appeal Panel would not consider that evidence.

Background

Citation 1

23. Mr. Denis was contacted by the complainant, Mr. L, in August 2020 about a motor vehicle accident (Accident) his daughter SL and her friend RM had been involved in. Mr. L was the owner of the vehicle SL was driving. Mr. L, SL and RM met with Mr. Denis to discuss the Accident and a contingency fee agreement was signed by SL. A few days later a contingency fee agreement was signed on behalf of RM, a minor, by BM, her litigation representative (and her mother). On October 27, 2020, Mr. Denis sent a letter to SL advising that he would no longer be representing SL with respect to the Accident.

He continued to act for RM and in April 2021, he filed a personal injury claim for injuries sustained in the Accident on behalf of RM, naming, among others, SL and Mr. L as defendants. The Statement of Claim was served upon SL and Mr. L in July 2020. This conduct is the subject of Citation 1.

24. The Hearing Committee found that Mr. Denis' conduct contravened sections 3.4-1 and 3.4-6(a) of the LSA Code of Conduct (Code) and that his conduct was deserving of sanction.

Citation 2

25. In November 2021, Mr. Denis was retained by DL to prepare and send a cease and desist letter (CD Letter) to DN following the end of their extra-marital affair. The CD Letter was sent to DN on November 13, 2021 alleging she was engaging in inappropriate behaviour and demanding that she cease the behaviour failing which a restraining order would be sought. The CD Letter also noted DN's employment as a peace officer and states "[s]uch conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue." This statement and a further email reiteration of it are the subject of Citation 2.
26. The Hearing Committee found that Citation 2 had been proven and that Mr. Denis' conduct was deserving of sanction.

The Submissions of the Parties

Mr. Denis's Submissions

Citation 1

27. Regarding Citation 1, counsel for Mr. Denis submitted that the Hearing Committee erred in finding Citation 1 amounted to conduct deserving of sanction. His central submission was that, at most, Mr. Denis' conduct was a technical breach arising from an honest but mistaken belief, not sanctionable misconduct.
28. Mr. Denis' counsel reviewed the background to the motor vehicle accident involving SL and RM. He emphasized that Mr. Denis had not previously known SL, RM, or Mr. L, and that he initially had very limited information about the accident. He submitted that although Mr. L believed he had sent a narrative document to Mr. Denis, the email did not show an attachment or paperclip, and Mr. Denis was adamant that he did not receive the document.
29. Mr. Denis' counsel further submitted that after receiving the police report, Mr. Denis concluded SL had a serious liability problem and that her claim lacked merit, while RM,

as passenger, had the viable claim. He argued that Mr. Denis stopped acting for SL because he believed he had a duty not to advance a meritless claim.

30. A major theme of his counsel's submissions was that Mr. Denis exercised due diligence. Counsel for Mr. Denis emphasized that Mr. Denis consulted his firm's conflicts officer, then contacted an LSA practice advisor, made notes of those discussions, and was left with the impression that there was no conflict. He argued there was no evidence that Mr. Denis misled either the conflicts officer or the practice advisor, or that he acted in bad faith.
31. Counsel for Mr. Denis submitted that when opposing counsel later raised the conflict issue, Mr. Denis undertook not to take further steps in the litigation until the issue was resolved, and he in fact took no further steps. Counsel argued that Mr. Denis ultimately referred the file to other counsel before any complaint was made to the LSA and collected no fees.
32. Counsel for Mr. Denis argued that the Hearing Committee failed to properly consider mitigating and contextual factors, including due diligence, good faith, honest mistake, lack of dishonesty, lack of concealment, lack of personal gain, lack of harm, and the fact that Mr. Denis ultimately removed himself from the file. He submitted that these factors were relevant to whether the conduct was deserving of sanction, not merely to sanction. He relied on the contextual approach to professional misconduct and argued that not every breach of the Code results in sanctionable conduct. He submitted that lawyers are not held to a standard of perfection and that a sincerely held but mistaken legal position should not automatically result in a finding of misconduct.
33. Mr. Denis' counsel also disputed the Hearing Committee's finding that Mr. Denis preferred his own interests over his clients' interests. He submitted there was no benefit to Mr. Denis, as he ultimately withdrew, referred the matter out, and charged no fees. He argued that the evidence did not support the conclusion that Mr. Denis acted out of self-interest.
34. Counsel for Mr. Denis further argued that Mr. L was not Mr. Denis' client. He emphasized that Mr. L did not sign a retainer, no identification form was completed for him, no fees were charged to him, and the only possible issue relating to him was property damage. His position was that the Hearing Committee erred in finding that Mr. L was a client.
35. In response to questions from the Appeal Panel, Mr. Denis' counsel maintained that the breach was "technical" because Mr. Denis came to appreciate, on reflection, that there was at least an appearance or spectre of conflict, and he then removed himself from the file. He did acknowledge that Mr. Denis' withdrawal was not immediate, but argued that no further litigation steps were taken during that period.

Citation 2

36. Mr. Denis' counsel submitted that the Hearing Committee erred in finding that Citation 2 was proven. His main argument was that Mr. Denis did not threaten a regulatory complaint to gain a civil benefit; rather, he was attempting to stop what he characterized as criminal or harassing conduct by DN.
37. Counsel for Mr. Denis argued that Code section 3.2-11 is intended to prohibit threatening criminal, quasi-criminal, or regulatory proceedings to gain a separate civil advantage. He submitted that this was not such a case because Mr. Denis' objective was simply to have DN stop contacting or harassing his clients. Mr. Denis' counsel emphasized that the "benefit" sought was not money, a litigation settlement, or leverage in another proceeding. Rather, it was the cessation of allegedly inappropriate or criminal conduct. He submitted that telling someone to stop harassing a client is not the type of civil advantage contemplated by the section of the Code.
38. Mr. Denis' counsel argued that the Hearing Committee's interpretation would create an untenable result: a victim could not retain counsel to demand that criminal conduct stop but would instead be forced to immediately report the matter to authorities. He submitted that the Code provision should not be read to prevent lawyers from demanding that unlawful conduct cease.
39. Counsel for Mr. Denis also submitted that it was unclear whether DN's employer was a regulatory authority for the purposes of the rule, and that DN was on leave from her peace officer position at the relevant time.
40. In response to questions from the Appeal Panel questions, Mr. Denis' counsel clarified that the relevant "benefit" under the rule would be a benefit to the client, not to Mr. Denis personally. He maintained that the only benefit sought was that DN leave the client alone, and that this did not amount to an improper civil advantage.

LSA Counsel's Submissions

Citation 1

41. LSA counsel submitted that Citation 1 involved a clear breach of the Code provision prohibiting a lawyer from acting against a former client in the same or a related matter. She stated that Mr. Denis acted for SL and then sued SL on behalf of RM in relation to the same motor vehicle accident. SL was plainly Mr. Denis' client: she attended the meeting, signed a contingency fee agreement, and Mr. Denis later wrote to her to advise that he would no longer act for her. LSA counsel also submitted that Mr. L was properly treated as a client or at least a person reasonably believing he was a client, given his involvement in contacting Mr. Denis, providing information, attending the meeting, and providing identification.

42. LSA counsel rejected the characterization of the breach as a “technical breach.” She submitted that this was a substantial breach of the Code, lasting over a significant period, not a momentary lapse. She argued that Mr. Denis continued acting for RM for approximately 14 months after the initial consultation and took steps including obtaining the police report, maintaining the file, drafting and serving the Statement of Claim, and remaining on the record.
43. LSA counsel further submitted that Mr. Denis did not get off the file because he recognized a conflict. Rather, she argued that the evidence showed he continued to deny any conflict and referred the matter out because the conflict issue would create delay, a “sideshow,” and possible cost exposure for RM.
44. LSA counsel submitted that the Hearing Committee did consider Mr. Denis’ alleged due diligence, good faith, and honest but mistaken belief, but reasonably gave those factors limited weight. She argued that the advice from the conflicts officer and practice advisor was only as good as the information Mr. Denis provided to them.
45. LSA counsel submitted that Mr. Denis’ own notes showed he focused on erroneous factual assumptions, including that Mr. L was not a client, that he had no confidential information, and that he had taken no steps to represent SL. She submitted those assumptions were wrong because Mr. Denis had met with SL, discussed the accident, entered into a contingency fee agreement, obtained information, and ordered the police report.
46. LSA counsel argued that the possession of confidential information was not the applicable test under Code section 3.4-6(a) and (b). She submitted that the rule prohibits acting against a former client in the same or related matter, regardless of whether confidential information was obtained.
47. LSA counsel submitted that Mr. L remained adamant that he had sent the narrative document to Mr. Denis, and that he believed the document was attached to his outgoing email. She acknowledged there was no copy of the email in evidence showing the paperclip attachment but submitted that the Hearing Committee was entitled to prefer Mr. L’s evidence and draw an inference from the six-minute turnaround between Mr. L’s email and Mr. Denis’ response discussing liability.
48. LSA counsel also submitted that, even apart from the narrative document, the Hearing Committee found Mr. Denis had received more subtle forms of confidential information, including how SL, RM, and Mr. L presented, the nature of their accounts, their injuries, and details of the accident.

49. LSA counsel submitted that the Hearing Committee did not find that Mr. Denis unequivocally preferred his own interests, but rather that public perception would likely view his actions that way. She argued that Mr. Denis stopped acting for the client with a liability problem and continued acting for the passenger with no liability issue, under a contingency fee arrangement.
50. LSA counsel stated that the issue was not whether Mr. Denis actually collected fees, but the potential for fees under the contingency arrangement. She submitted that a claim without a liability issue had a greater prospect of recovery and therefore greater potential value to Mr. Denis.
51. LSA counsel submitted that the Hearing Committee's findings were supported by the record and should receive deference. She argued that the Hearing Committee properly considered the full context, including the alleged due diligence, the number of opportunities Mr. Denis had to recognize the conflict, the lack of consent from SL or Mr. L, and the fact that Mr. Denis remained firm in his position until the file was eventually referred out.

Citation 2

52. LSA counsel submitted that Mr. Denis' argument regarding Citation 2 only worked if DN's conduct was characterized as purely criminal. She argued that the demand letter and emails went beyond criminal conduct and sought broad cessation of all forms of contact, including social media posts, indirect contact, and other interactions. She submitted that Mr. Denis wanted the equivalent of a restraining order or injunction without going to court. The demand was that DN cease contact "in the broadest sense," not merely stop criminal conduct.
53. LSA counsel submitted that police had already been contacted and were already aware of the allegations against DN. She argued that what was improper was Mr. Denis' use of the threat of reporting DN to her employer, Alberta Health Services, under her peace officer code of conduct, to obtain a private or civil benefit for his client. She submitted that the threatened report to DN's employer was used as leverage to make DN stop contacting Mr. Denis' client and related persons. Counsel characterized this as using the prospect of a regulatory complaint to secure a private grievance.
54. LSA counsel submitted that the benefit sought was the cessation of contact and avoidance of civil litigation. She pointed to the language in Mr. Denis' correspondence referring to defamatory claims, a restraining order, a putative plaintiff, and a possible tort action for civil harassment. She argued those were civil remedies or civil advantages.

55. LSA counsel submitted that the Hearing Committee properly found the elements of Code section 3.2-11 were established: there was a threat to report to a regulatory authority, and the threat was made in an attempt to gain an advantage for the client.
56. Lastly, LSA counsel submitted that DN's credibility was not central to Citation 2 because the relevant evidence was the correspondence sent by Mr. Denis. Once the letters and emails were admitted, she argued, the issue was whether those communications breached the Code.

Reply of Counsel for Mr. Denis

57. In reply with respect to Citation 1, Mr. Denis' counsel reiterated that after the Statement of Claim was filed, Mr. Denis took no further litigation steps. He submitted that once matters crystallized for Mr. Denis, he got off the file and referred it out. Counsel maintained that Mr. Denis initially believed there was no conflict, based on the advice or impressions he received, but later accepted that he needed to remove himself.
58. On Citation 2, Mr. Denis' counsel again submitted that DN's conduct was criminal in nature and that Mr. Denis' communications were directed at getting her to stop contacting or harassing his clients. He rejected the characterization that Mr. Denis used the possibility of reporting DN as leverage for a civil advantage.

Analysis

Standard of Review

59. The parties were in agreement that the standard of review in this appeal is as set out in *Yee v Chartered Professional Accountants of Alberta*². In paragraph 35 of Yee, the standard of review for appeals of disciplinary tribunals is described. When reviewing the decision of a discipline tribunal, the appeal panel should remain focused on whether the decision is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal panel should remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review.
60. The Alberta Court of Appeal recently confirmed the appropriate standard of review for an appeal panel of a professional disciplinary body in *Charkhandeh v College of Dental Surgeons of Alberta*, [2025 ABCA 258](#). In that case, the Court of Appeal summarized the analysis in Yee and reiterated that the appeal is not a de novo hearing and that the appeal panel should focus on articulable errors of principle or unreasonableness in the decision under appeal.

² *Yee v Chartered Professional Accountants of Alberta*, [2020 ABCA 98](#).

61. In paragraph 48 of *Charkhandeh*, the Court stated that Yee encourages tribunals to remain focused on whether the decision is tainted by errors of law, errors of principle, or is not reasonably sustainable, rather than seeking to apply abstract standards of review. Findings of fact and credibility, and inferences drawn from them, should be afforded significant deference. The appeal tribunal should not depart from these findings unless there is some articulable reason for disagreeing. Decisions engaging the expertise of the profession, such as expected standards of conduct, should be reviewed for error of principle, potential injustice or unreasonableness. In short, the appeal tribunal is to conduct an appeal, not a rehearing, and should focus on articulable errors of principle or unreasonableness in the decision under appeal.

Citation 1

- (i) **Ground for Appeal: The Hearing Committee erred in concluding the Member's due diligence and good faith would not inform the perception of the public in respect of the Member's conduct and was therefore irrelevant to the question of whether a Member's conduct was deserving of sanction.**
62. Mr. Denis asserts that the Hearing Committee erred in concluding the issues of due diligence, a sincerely but mistakenly held legal position, or actions taken in good faith are not factors to consider in relation to whether Mr. Denis' conduct is deserving of sanction.
63. The Merits Decision references *Law Society of Alberta v Ouellette*, [2012 ABLs 4](#)³ (*Ouellette*), which sets out factors to consider when determining whether conduct rises to the level of sanctionable conduct (*Ouellette* Factors), and concludes that "These factors also help inform the perception of the public in respect of the conduct in question, though they are not exhaustive."⁴ The Hearing Committee expressly addresses the *Ouellette* Factors and the evidence at paragraph 151 of the Merits Decision.
64. It appears Mr. Denis' appeal is concerned with paragraph 150 of the Merits Decision, which references the *Ouellette* Factors and states:
- Of note, exercise of due diligence, a sincerely held but mistaken legal position or actions taken in good faith are not included among these factors. Those factors do not "help inform the perception of the public in respect of the conduct in question" although they may go to determination of sanction.⁵
65. Mr. Denis asserts that it is an error of law for the Hearing Committee to fail to consider the *Ouellette* Factors "as well as the evidence of due diligence and an honest but mistaken belief."⁶ But it is clear from the Merits Decision⁷ that the Hearing Committee

³ *Law Society of Alberta v Ouellette*, [2012 ABLs 4](#) [*Ouellette*] at paras 81-83.

⁴ Merits Decision, para 149.

⁵ Merits Decision, para 150.

⁶ Appeal Submissions of Mr. Denis, para 32.

⁷ Merits Decision, paras 34-35, 106, 140-148.

did consider Mr. Denis' assertions of due diligence, a sincerely but mistakenly held legal position, and actions taken in good faith – and ultimately concluded that those factors do not help inform the perception of the public in respect of the conduct in question. The Hearing Committee's finding in that regard is clearly explained in the Merits Decision.⁸

66. The Ouellette Factors include the following:

(g) What opportunity did the member have to consult with others?⁹

67. With respect to Mr. Denis' argument that the exercise of due diligence, an honest but mistaken belief, and actions taken in good faith should have been considered, the Hearing Committee expressly considered the following in relation to that factor:¹⁰

- 1) Mr. Denis considered whether he could sue SL and Mr. L in April 2021;
- 2) Mr. Denis sought input from his firm's conflict officer and a practice advisor;
- 3) His note of those discussions states that Mr. L was never a client and that he discussed with his firm's conflicts officer that he "was not in possession of any confidential information" and "we didn't have any confidential information in our possession that could prejudice her";
- 4) His notes of his discussion with the practice advisor states "discussed rules on acting against former clients and didn't feel this was an issue *as we didn't have any confidential information and took no steps to represent her*" [emphasis added]; that upon opposing counsel raising the conflict, Mr. Denis defended his position for six weeks and did not take up opposing counsel's offer of a joint meeting with the practice advisor, and did not, as argued by his counsel before the Hearing Committee and, indeed, before this Appeal Panel, "immediately" take steps to get off the file once the conflict issue was raised.

68. Mr. Denis' notes of his meeting with the practice advisor that "we didn't have any confidential information and took no steps to represent [SL]" plainly are not true, in both respects. With respect to steps taken to represent SL, Mr. Denis received information about the matter in issue,¹¹ from Mr. L directly and from Mr. L via Mr. Denis' legal assistant,¹² met with SL, Mr. L and RM and discussed the motor vehicle accident scene and circumstances for 30 to 45 minutes, explained and entered into a contingency fee agreement with SL at the meeting, told Mr. L "I am going to take your daughter's injury file" and in the same email, discussed the evidence and the law in relation to liability,¹³

⁸ *Ibid.*

⁹ Merits Decision, para 149, citing *Law Society of Alberta v Ouellette*, [2012 ABLS 4](#) at paras 81-83.

¹⁰ Merits Decision, para 151(5).

¹¹ Merits Decision, para 22-23; Appeal Submissions of Mr. Denis, paras 14-16.

¹² Appeal Submissions of Mr. Denis, paras 14-15.

¹³ Exhibit 9 at the Merits Hearing.

and ordered the RCMP report of the accident. With respect to Mr. Denis being in receipt of confidential information, he was in receipt of information about the matter in issue from Mr. L (including via Mr. Denis' legal assistant) and from his meeting with SL, Mr. L and RM.

69. As stated in the Merits Decision, sections 3.4-6(a) and (b) of the Code are clear that under no circumstances can a lawyer act against a former client in the same matter or a related matter. Section 3.4(6)(a) and (b) of the Code are not dependent upon possession of confidential information.¹⁴ Mr. Denis acted against his former client – SL – in the same matter, or, at the very least, in a related matter to the one in which he acted on behalf of SL. By doing so, Mr. Denis clearly acted contrary to sections 3.4(6)(a) and (b) of the Code. With respect to Mr. L, as set out in detail at part (iii)(b) of this decision in relation to Citation 1, the Hearing Committee's determination that Mr. L was a client of Mr. Denis', within the meaning of the Code, was reasonable. That matter was the same matter or, at the very least, a related matter to the one in which he acted adverse to Mr. L.
70. In support of his argument that the Hearing Committee failed to consider evidence of due diligence, an honest but mistaken belief, and actions taken in good faith, Mr. Denis cites:
- 1) *Law Society of Alberta v Faul*, [2024 ABLs 17](#), wherein an appeal panel of the LSA considered whether the hearing committee had erred in emphasizing certain aggravating factors in relation to the sanction imposed. The appeal panel in that case emphasized that it was an appeal of the sanction decision, and *not* an appeal of the merits decision;¹⁵
 - 2) *Abrametz v Law Society of Saskatchewan*, [2023 SKCA 114](#), wherein the Saskatchewan Court of Appeal confirmed that a failure to consider a relevant factor in sentencing constitutes a reviewable error;¹⁶
 - 3) *Law Society of British Columbia v Yen*, [2024 BCCA 416](#), wherein the British Columbia Court of Appeal considered a number of factors with regard to whether the lawyer's conduct constituted professional misconduct, including but not limited to the fact that there was no suggestion that the lawyer's breaches of trust accounting were done in bad faith or for personal gain, that the failure was an oversight, not an attempt to conceal, and that there was no evidence that actual harm had arisen;¹⁷
 - 4) *Law Society of Alberta v Lutz*, [2015 ABLs 12](#), where the hearing committee considered the lawyer's intent, and that there was no dishonest or reckless intent

¹⁴ Merits Decision, para 118.

¹⁵ Appeal Submissions of Mr. Denis, para 29.

¹⁶ Appeal Submissions of Mr. Denis, para 30.

¹⁷ Appeal Submissions of Mr. Denis, para 33.

or conduct and the lawyer arrived at the proper destination, resulting in no sanctionable conduct;¹⁸

- 5) *Merchant v Law Society of Saskatchewan*, [2022 SKCA 2](#), for the proposition that due diligence and mistaken belief are factors to consider in determining whether conduct is worthy of sanction;¹⁹
- 6) *Xiao-Phillips v Law Society of Saskatchewan*, [2024 SKCA 44](#), with respect to the Court of Appeal's comments suggesting a lack of good faith is not required to ground a finding of conduct unbecoming, and that the contextual approach in *Groia* applies more broadly to allegations of conduct unbecoming.²⁰

71. The Hearing Committee held that the cases cited by Mr. Denis' counsel do not support his arguments, and addressed the cases,²¹ stating that:

Inadvertence, good faith, honest but mistaken understanding and other non-willful conduct are not sufficient to avoid a finding of sanctionable conduct when the conduct is a breach of a specific duty or Rule in the Code and is considered from the lens of public interest and the standing of the legal profession.²²

72. The Hearing Committee also considered the following case law:

- 1) *Hittrich (Re)*, [2019 LSBC 24](#), which states that "[w]hile the presence of *bona fides* will not excuse conduct that is otherwise professional misconduct, advertence or *mala fides* is not required to prove professional misconduct";²³
- 2) *Law Society of Alberta v Gubbins*, [2011 ABLs 26](#), wherein conduct deserving of sanction was found in circumstances where the conduct was inadvertent and caused no harm;²⁴
- 3) While counsel for Mr. Denis cites the decision in *Lyons (Re)*, [2008 LSBC 9](#) in support of his argument that a mere technical breach of a Rule will not, "in itself, constitute professional misconduct", the hearing panel in that case carefully distinguished a breach of Rules from professional misconduct. The Hearing Committee noted that Citation 1 is not a breach of the Rules of the LSA, but a breach of the Code and inherently professional misconduct;²⁵

¹⁸ Appeal Submissions of Mr. Denis, para 38.

¹⁹ Appeal Submissions of Mr. Denis, paras 42-43.

²⁰ Appeal Submissions of Mr. Denis, para 44.

²¹ Merits Decision, paras 140-148.

²² Merits Decision, para 141.

²³ Merits Decision, para 142.

²⁴ Merits Decision, para 143.

²⁵ Merits Decision, paras 144-145.

- 4) *Groia v Law Society of Upper Canada*, [2018 SCC 27](#) (*Groia*), which considers whether it is professional misconduct to challenge opposing counsel's integrity based on a sincerely held but incorrect legal position, and finds that it is not, so long as the challenge has sufficient factual foundation, such that if the legal position were correct, the challenge would be warranted. The Hearing Committee found that *Groia* is clearly distinguishable – Mr. Denis had not been cited for advancing or advocating a misinterpretation of the conflict of interest rules (although he did that too), but rather for breach of a specific conflict rule.²⁶ A lawyer can be guilty of professional misconduct for acting in ignorance of rules and norms that a lawyer ought to be aware of.²⁷
73. The caselaw confirms that ignorance of the Code does not excuse violation of it. As held by the Hearing Committee:
- Ignorance of the Code cannot be determinative of whether a breach warrants sanction when considering the public interest and standing of the legal profession as required by section 49(1) of the *Act*. The Code would be redundant, the public interest would no longer be protected by the Code and the public would lose confidence in the legal profession.²⁸
74. As set out above, the Hearing Committee in the present case *did* consider Mr. Denis' evidence of due diligence, honest but mistaken belief, and actions taken in good faith. It did not err in failing to consider the same. The Hearing Committee appropriately considered all of the Ouellette Factors. That the evidence of due diligence, honest but mistaken belief and actions taken in good faith were not determinative of whether Mr. Denis' conduct was deserving of sanction was not an error, in consideration of all of the evidence before the Hearing Committee in relation to *all* of the Ouellette Factors.
75. The Hearing Committee's finding that Mr. Denis' breach of section 3.4-6 of the Code "was not simply a "technical breach" but a substantial breach"²⁹ and its determination that Mr. Denis' conduct was deserving of sanction is reasonable.
- (ii) **Ground for Appeal: The Hearing Committee erred in concluding actions taken by the Member after a breach were not relevant to the question of whether the Member's conduct (as a whole) was deserving of sanction.**
76. Mr. Denis points to his completion of the LSA's Practice Review Committee (PRC) process with no restrictions imposed on his practice as being inconsistent with conduct worthy of sanction, that the PRC process was relevant to the question of whether the conduct in question was worthy of sanction,³⁰ and that the Hearing Committee erred in failing to consider the PRC process as well as Mr. Denis' conduct in relation to the same.

²⁶ Merits Decision, paras 146-147.

²⁷ *Gregory v The Law Society of British Columbia*, [2024 BCCA 350](#) at para 69.

²⁸ Merits Decision, para 148.

²⁹ Merits Decision, para 121.

³⁰ Appeal Submissions of Mr. Denis, paras 52-53.

77. With respect, Mr. Denis' submissions in this regard fail to recognize the purpose of the PRC process, as well as the legislation with respect to whether conduct is deserving of sanction.
78. The LSA's Brief explains the differing purposes of a PRC and of a hearing committee:
- 1) The purpose of the PRC is to provide supervisory and corrective action on matters that are referred to it. The PRC serves the public interest by providing these supervisory and corrective actions to address any issues in the lawyer's practice and prevent further issues. The PRC cannot issue sanctions and is not tasked with determining whether misconduct is sanctionable.
 - 2) The purpose of the Hearing Committee is to determine findings of guilt (or not guilty) relating to allegations of unprofessional conduct, determine if the conduct is sanctionable, and finally issue a sanction that is commensurate with the degree of seriousness of the conduct and in line with the public interest.³¹
79. Mr. Denis submits that under section 49(2) of the *Act*, "conduct" in respect of a member includes all conduct, including the completion of a PRC process. Section 49(2) does include a definition of "conduct" to include "any matter regarding the acts of the member or the conduct of the member". But its relevance to whether conduct is deserving of sanction pursuant to section 49(1) relates to the conduct complained of – not to ameliorative steps taken by a member after a complaint has been made. Section 49(1) states as follows:

Interpretation

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or of the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

80. The consideration of completion of a PRC process can be a consideration with respect to what an appropriate sanction should be but is not a consideration in determining whether conduct is sanctionable in the first place. In this case, the Sanction Decision was determined based on a joint submission of the LSA and Mr. Denis.

³¹ LSA Brief, paras 110-111.

(iii) Ground for Appeal: The Hearing Committee erred in law in making findings of fact unsupported by the evidence which affected its determination of whether the conduct relevant to Citation 1 was worthy of sanction

(a) The finding that the Member preferred his own interests over those of his client

81. The Hearing Committee held that while Mr. Denis denies that he chose the better client because she had the better claim, public perception would likely see this differently.³²
82. Mr. Denis argued that the Hearing Committee erred in finding that, viewed from the perception of the public, Mr. Denis preferred his own interests, which he submits could not have been supported by the evidence.
83. With respect to the evidence, the Hearing Committee's Merits Decision notes Mr. Denis' evidence that he ceased acting for SL following receipt of the RCMP report because of his duty not to pursue meritless claims. But the Merits Decision also notes that Mr. Denis' description of the RCMP's version of the Accident (in Mr. Denis' letter to SL of October 27, 2020) included the same information that Mr. Denis already had from SL and Mr. L *before* he received the RCMP's report: that SL was turning left, the onus on the left-turning vehicle, and that there were no known witnesses. The Merits Decision states "It is hard to imagine how the RCMP report could have changed [Mr. Denis'] determination of the liability issue sufficient to warrant the description of SL's claim as meritless only then and not when he agreed to act for her."³³
84. The Hearing Committee held that when viewed through the lens of public perception, Mr. Denis' loyalty to SL "was materially and adversely affected by the [his] own interest" [section 3.4-1[1]] in not pursuing a claim with a significant liability issue in favour of a claim with none.³⁴
85. As stated in the LSA's Brief: "The Hearing Committee did not find that Mr. Denis unequivocally preferred his own interests but rather the public perception of Mr. Denis' actions would likely give rise to a public concern that he preferred his own interests."³⁵ Specifically, the Hearing Committee found that when viewed through the lens of public perception, Mr. Denis' loyalty to SL was "materially and adversely affected by his own interest in not pursuing a claim with a significant liability issue in favour of a claim with none", particularly in the circumstances where Mr. Denis had a contingency fee arrangement with both SL and RM.
86. Mr. Denis asserts that the Hearing Committee erred in failing to consider that he ultimately ceased acting for both parties, voluntarily and before becoming aware of any complaint to the LSA. In fact, the Hearing Committee explicitly sets out in the Merits

³² Merits Decision, para 134.

³³ Merits Decision, para 135.

³⁴ Merits Decision, para 136.

³⁵ LSA Brief, para 119.

Decision that there were at least four occasions where Mr. Denis could have rectified the conflict situation, but chose not to.³⁶ Mr. Denis' counsel's arguments (both before the Hearing Committee and before the Appeal Panel) that Mr. Denis "immediately" took steps to get off the file once the conflict issue was raised is inconsistent with the evidence. Even upon defence counsel for SL and Mr. L raising the conflict issue, it was six weeks before Mr. Denis recommended to BM that he cease to act for RM, and even then, he only referenced the allegation of a conflict as relating to his representation of Mr. L (not SL), denied that there was a conflict, and recommended that the matter be referred out as it would tie up the litigation for a long period of time and could expose RM to a cost award.³⁷

87. Mr. Denis argues that the Hearing Committee erred in failing to consider that he did not request legal fees in connection with his retainer with SL or RM, and collected none. Mr. Denis had entered into contingency fee arrangements with both SL and RM. He had no entitlement to receive any fees from either of them.
88. The Appeal Panel finds that the Hearing Committee's Merits Decision that viewed from the lens of public perception, Mr. Denis preferred his own interests over those of his client, was supported by the evidence and was reasonable.

(b) The Finding that the Member continued to act despite knowing he was in a conflict

89. This ground for appeal requires analysis of three issues: whether SL was Mr. Denis' client, whether Mr. L was Mr. Denis' client, and whether Mr. Denis knew or ought to have known he was in a conflict with respect to SL, Mr. L, or either of them. The Appeal Panel has determined the answer to all three questions is yes.
90. Clearly, SL was a client of Mr. Denis. Mr. Denis met with SL to discuss the Accident, told SL's father Mr. L that he was "going to take your daughter's injury file",³⁸ provided advice with respect to liability, stating in part "... [there] may be a liability issue as she was turning left and there is an onus against her. This can be rebutted with the evidence that the truck was signalling right....",³⁹ entered into a contingency fee retainer agreement with SL, ordered a police report with respect to the Accident, and on October 27, 2020, sent a letter to SL advising her that he was "going to decline to represent [SL] further" (thus confirming he had been representing her) with respect to the Accident, and thus terminated his representation of her as his client.⁴⁰
91. With respect to Mr. L, Mr. Denis asserts that Mr. L was not his client. The Hearing Committee addressed this with reference to section 1.1-1 of the Code, which includes a definition of "client" which "may include a person who reasonably believes that a lawyer-

³⁶ Merits Decision, para 151(5).

³⁷ Exhibit 20 at the Merits Hearing.

³⁸ Exhibit 9 at the Merits Hearing.

³⁹ *Ibid.*

⁴⁰ Exhibit 14 at the Merits Hearing.

client relationship exists, whether or not that is the case at law."⁴¹ The Commentary in relation to section 1.1-1 is instructive:

[1] A lawyer-client relationship is often established without formality. For example, an express retainer or remuneration is not required for a lawyer-client relationship to arise. Also, in some circumstances, a lawyer may have legal and ethical responsibilities similar to those arising from a lawyer-client relationship. For example, a lawyer may meet with a prospective client in circumstances that give rise to a duty of confidentiality, and, even though no lawyer-client relationship is ever actually established, the lawyer may have a disqualifying conflict of interest if he or she were later to act against that prospective client. It is, therefore, in a lawyer's own interest to carefully manage the establishment of a lawyer-client relationship.

92. The Hearing Committee's determination that Mr. L was a "client" of Mr. Denis', within the meaning of the Code, was reasonable:

- 1) Mr. L provided information about the Accident to Mr. Denis, via telephone conversation with Mr. Denis' assistant, as is admitted in Mr. Denis' Appeal Brief;⁴²
- 2) Mr. L provided information about the Accident to Mr. Denis on August 14, 2020, via email, which Mr. Denis replied to;⁴³
- 3) Mr. L attended with SL and RM and provided information regarding the Accident to Mr. Denis during a meeting between the four of them on August 18, 2020;
- 4) Mr. Denis took a copy of Mr. L's identification when they met on August 18, 2020;
- 5) Mr. Denis provided advice on liability in an email to Mr. L;⁴⁴
- 6) Mr. L sought and received advice from Mr. Denis regarding a property claim on the vehicle involved in the Accident, and Mr. Denis advised Mr. L that the document provided to Mr. L by his insurer was industry-standard and that Mr. Denis could write a letter to the insurer if Mr. L continued to have issues with them;⁴⁵
- 7) Mr. L gave evidence that he believed that a solicitor-client relationship existed between him and Mr. Denis, which the Hearing Committee found was a supported by the evidence;⁴⁶

⁴¹ Code of Conduct, s. 1.1-1, "client".

⁴² Appeal Submissions of Mr. Denis, paras 14, 71.

⁴³ Exhibit 23 at the Merits Hearing.

⁴⁴ Exhibit 9 at the Merits Hearing.

⁴⁵ Exhibits 11 and 12 at the Merits Hearing.

⁴⁶ Hearing Record, Exhibit 9 at the Appeal Hearing, Tab 1, Transcript Merits (February 6, 2024), pp 97/11-19, 117/3-16; Merits Decision at paras 111, 113.

- 8) Section 1.1-1 of the Code and the Commentary thereto confirms that a lawyer-client relationship is often established without formality, including as a result of the lawyer meeting with the prospective client in circumstances that give rise to a duty of confidentiality, even if no lawyer-client relationship is ever actually established;
- 9) The Commentary to section 3.4-6 of the Code further confirms that a person who has consulted a lawyer in the lawyer's professional capacity may be considered a former client for the purposes of that section even though the lawyer did not agree to represent that person or did not render an account to that person.⁴⁷
93. As such, both SL and Mr. L constitute "clients" of Mr. Denis pursuant to the Code.
94. With respect to whether the Hearing Committee erred in law in making a finding of fact, unsupported by the evidence, that Mr. Denis continued to act despite knowing he was in a conflict, sections 3.4-1 and 3.4-6 of the Code state:

Duty to Avoid Conflicts of Interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

...

Acting Against Former Clients

3.4-6 Unless the former client consents, a lawyer must not act against a former client:

- (a) in the same matter,
- (b) in any related matter, or
- (c) except as provided by Rule 3.4-7, in any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

95. The Commentary to section 3.4-1 states in part that "A conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person."⁴⁸ It also states that "There must be a

⁴⁷ Code of Conduct, Commentary [2], section 3.4-6.

⁴⁸ Code of Conduct, Commentary [1], section 3.4-1.

reasonable basis upon which a lawyer may objectively conclude that the client commonly accepts that its lawyers may act against it."⁴⁹

96. RM, SL and Mr. L were clients of Mr. Denis with respect to the Accident. Mr. Denis sent a letter to SL on October 27, 2020 advising SL that Mr. Denis would no longer be representing SL with respect to the Accident. Mr. Denis continued to act for RM, and then on April 30, 2021, filed a Statement of Claim on behalf of RM in relation to the Accident, naming SL and Mr. L as Defendants. The Statement of Claim on behalf of RM claimed damages, interest and costs against each of SL and Mr. L.⁵⁰
97. There was no reasonable basis for Mr. Denis to objectively conclude that SL or Mr. L consented to Mr. Denis acting against them with respect to the Accident. Mr. Denis had entered into a contingency engagement agreement with SL. Mr. Denis's office had advised SL and Mr. L that if a conflict arose between SL and Mr. L, he would refer RM to independent counsel – not SL.⁵¹ At no point, despite the specific requirement of section 3.4-6 of the Code, did Mr. Denis request or obtain SL or Mr. L's consent for Mr. Denis to act adverse to them with respect to the Accident. Mr. Duncan Taylor, who acted as legal counsel for SL and Mr. L upon Mr. Denis' office serving RM's Statement of Claim upon SL and Mr. L, repeatedly advised Mr. Denis that SL and Mr. L took the position that Mr. Denis was in a conflict and could not act against them. Also, clearly the fact that Mr. Denis ultimately sued SL and Mr. L, on behalf of RM, in relation to the Accident, substantiated the substantial risk that SL and Mr. L were materially and adversely affected by Mr. Denis' decision to do so.
98. Mr. Denis continued to act for RM on the same matter in which he had acted for SL and Mr. L – the Accident. Even if the matter were a related (as compared to the same) matter, both situations contravene section 3.4-6 of the Code, and that is the case regardless of whether Mr. Denis had relevant confidential information arising from the representation of SL and Mr. L that may prejudice them: section 3.4-6(a) and (b). Sections 3.4-6(a) and (b) very clearly prohibit a lawyer from acting against a former client in the same matter or in any related matter unless the former client consents – which neither SL or Mr. L did.
99. Mr. Denis asserts he misunderstood this aspect of section 3.4-6 of the Code. However, the Hearing Committee addresses this squarely where it held in its Merits Decision: "Ignorance of the Code cannot be determinative of whether a breach warrants sanction when considering the public interest and standing of the legal profession as required by section 49(1) of the Act. The Code would be redundant, the public interest would no longer be protected by the Code and the public would lose confidence in the legal profession".⁵² This is addressed further in relation to Ground 1, above.⁵³

⁴⁹ Code of Conduct, Commentary [13], section 3.4-1.

⁵⁰ Exhibit 13 at the Merits Hearing.

⁵¹ Exhibit 10 at the Merits Hearing.

⁵² Merits Decision, para 148.

⁵³ See paras 70-73.

100. Mr. Denis asserts that he consulted with his firm's conflicts officer and with a practice advisor at the LSA with regard to whether he could act against SL and Mr. L, and that he was left with the impression that there was no conflict.⁵⁴ However, Mr. Denis did not tender any evidence from either the conflicts officer or the practice advisor. The Hearing Committee reasonably held that the advice from the conflicts officer and the practice advisor was only as good as the information Mr. Denis would have provided to them.⁵⁵ Mr. Denis' own note to file of his conversation with the practice advisor demonstrates that he did not provide accurate information during that conversation; the note states, in part: "... discussed rules on acting against former clients and didn't feel this was an issue as we didn't have any confidential information and took no steps to represent her"⁵⁶ [*emphasis added*]. In the circumstances where Mr. Denis breached section 3.4-6 by acting against his former clients in the same matter in which he had acted for them, without their consent, it was Mr. Denis' burden to prove that he reasonably relied on information given to him by his firm's conflicts officer or by his practice advisor in doing so.⁵⁷ No evidence from the conflicts officer or the practice advisor was tendered as to the specific information discussed between either of them with Mr. Denis.
101. In its Merits Decision, the Hearing Committee confirmed that section 3.4-6 of the Code is clear that in no circumstances can a lawyer act against a former client in the same matter or a related matter, being a complete prohibition reflecting the ongoing duty of loyalty owed to the former client and a presumption that the lawyer, having acted for that client, has confidential information. The Hearing Committee adopted the reference to this prohibition as the "bright line rule", as held in *Habina v Saretsky*, [2024 ABKB 24](#) at paras 13-26. The Hearing Committee also noted, with reference to *Brookville Carriers Flatbread GP Inc. v Blackjack Transport Ltd.*, [2008 NSCA 22](#) at paragraph 49, that the duty not to act against a former client in the same or a related matter is not limited to situations where by doing so, the lawyer is placing at risk the former client's confidential information.⁵⁸
102. As such, the Appeal Panel does not accept Mr. Denis' argument that the Hearing Committee erred in law in making findings of fact unsupported by the evidence that Mr. Denis continued to act despite knowing he was in a conflict. The Hearing Committee reasonably decided that Mr. Denis continued to act for RM despite the fact that he knew or ought to have known he was in a conflict.
103. Further, the Hearing Committee's determination that Mr. Denis' conduct in this regard is deserving of sanction is also reasonable. The Appeal Panel agrees that Mr. Denis'

⁵⁴ Appeal Submissions of Mr. Denis, paras 18-19, 23.

⁵⁵ Merits Decision, para 151(5)(iii).

⁵⁶ Exhibit 18 at the Merits Hearing.

⁵⁷ *R. v Meer*, [2015 ABCA 141](#) at para 58(a), citing *R. v Joannisse*, [1995 CanLII 3507](#) (ONCA).

⁵⁸ Merits Decision, paras 118-120.

conduct was not simply a "technical breach", as Mr. Denis asserts, but a substantial breach.⁵⁹

(c) The finding that the Member had received confidential information from SL's father in the form of an email attachment and that SL's father was the Member's client⁶⁰

104. Mr. Denis' argument in this regard misconstrues the Merits Decision regarding Mr. Denis having received confidential information from SL's father.
105. It is important to note, as the Hearing Committee did⁶¹, that whether or not Mr. Denis received confidential information from SL or Mr. L is irrelevant to the question of whether Mr. Denis breached section 3.4-6 of the Code. Section 3.4-6 states:

Acting Against Former Clients

3.4-6 Unless the former client consents, a lawyer must not act against a former client:

- (a) in the same matter,
- (b) in any related matter, or
- (c) except as provided by Rule 3.4-7, in any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

106. In the present case, Mr. Denis acted against SL and Mr. L in the same matter in which he had acted for them. Section 3.4-6 applies, *regardless* of whether Mr. Denis received relevant confidential information from his representation of them that may prejudice them. The application of section 3.4-6(a) is not conditional upon the lawyer having received relevant confidential information. That is also the case with respect to section 3.4-6(b).
107. As such, whether or not Mr. Denis received Exhibit 8 (August 13, 2020 Narrative) by way of emails from Mr. L dated August 14, 2020 (Exhibit 9) is irrelevant to the issue of whether Mr. Denis is guilty of Citation 1.⁶² Further, as the Hearing Committee

⁵⁹ Merits Decision, para 121.

⁶⁰ Appeal Submissions of Mr. Denis, paras 66-73.

⁶¹ Merits Decision, para 125.

⁶² Although whether Mr. Denis received relevant confidential information arising from his representation of SL and Mr. L is irrelevant to the question of whether Mr. Denis breached section 3.4-6(a) (or (b)) of the Code, the Appeal Panel further notes that if the receipt of confidential information were relevant to its analysis, it is clear from the record that Mr. Denis did receive relevant confidential information from his representation of SL and Mr. L that may prejudice them, through his legal assistant (as admitted at paras 14 and 71 of Mr. Denis' Brief), as is obvious from Mr. Denis' email correspondence with Mr. L at Exhibits 9, 10 and 12, and through Mr. Denis' meeting with SL, Mr. L and RM on August 18, 2020 – even if Mr. Denis did not receive the August 13, 2020 Narrative included at Exhibit 8 (marked at the Merits Hearing) as an attachment to the emails of August 14, 2020 at Exhibit 9 (marked at the Merits Hearing).

acknowledges,⁶³ its determination that Mr. Denis did receive Exhibit 8⁶⁴ (which is a finding of fact, afforded deference by an appeal panel) is not determinative of its decision that Mr. Denis breached section 3.4-6 of the Code.

108. Further, and as discussed above, the Hearing Committee did not err in finding that Mr. L was Mr. Denis' client.

Citation 2

(i) Ground for Appeal: The Hearing Committee erred in finding that the cessation of criminal activity constituted a gain or civil benefit to the Member's client

109. As is set out in the Merits Decision, the CD Letter was sent to DN from Mr. Denis by email on November 13, 2021, and reads in part:

We understand from our client that you have been engaging in inappropriate behavior including without limitations as follows:

- Threatening to report false allegations of sexual assault and/or bodily harm on the part of our client;
- Continually contacting [DL]'s wife, children, close friends, and immediate family;
- Posting defamatory insults across social media platforms;
- Engaging in harassing phone calls and messages to our client.

Let us be clear: our client does not desire any type of contact in the broadest sense. We require you to cease and desist any and all attempts to contact him and any and all related parties as well as making false and defamatory claims on social media. If this demand is not heeded forthwith and immediately, our client is intent on pursuing a restraining order as against you.

We are also aware that you are employed as a Peace Officer. Such conduct may verily fall outside of your code of conduct as part of your profession and our client reserves any and all additional remedies should this conduct continue.

[italics added]

110. DN responded by email to Mr. Denis the same day as follows:

I will defiantly [sic] be getting a lawyer. I never once said anything about sexual assault. He has an STD and never told me about it.

⁶³ Merits Decision, para 125.

⁶⁴ Merits Decision, para 132.

He placed a false police report. I have all the text messages from our relationship. I told the cops yesterday that I will have no contact with them.

111. Mr. Denis emailed DN on December 9, 2021 (Email), writing:

It has come to my attention that photographs that are only in your possession including my clients children has surfaced on tinder and elsewhere without his consent. The children are minors and our client forbids dissemination of these photos to any third party and requires immediate deletion of same as they involve minors to which a reasonable expectation of privacy attaches.

Please be advised that if immediate compliance to this is not effected we reserve the right to take further steps at law including without limitation reporting this matter to your employer as a violation of your code of conduct as a peace officer.

Bluntly. This will go away and you won't get any more letters from me if you leave my client alone.

This is a serious matter and we recommend you obtain independent legal counsel as we represent the putative plaintiff in this matter and cannot represent your interests.

[italics added]

112. DN responded as follows:

I don't have a clue what you're talking about. I made those kids my priority while DL and I were in a relationship. I would never post anything about his kids.

As for my work goes I know it's against your code of conduct to be threatening my job.

113. The email exchange continued with Mr. Denis responding:

At no point did I "threaten your job" but rather simply indicated that we reserve the right to report this matter to your employer should the harassment of my client continue. You have a code of conduct that you are bound to follow by way of your employment.

As indicated, if you simply leave my client alone (directly or indirectly), this matter will go away and you will not hear from me again.

114. Section 3.2-11 of the Code states as follows:

3.2-11 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

a) to initiate or proceed with a criminal or quasi-criminal charge; or

- b) to make a complaint to a regulatory authority.

Commentary

[1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid money, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system. Nor is it improper for a lawyer to request that another lawyer comply with an undertaking or trust condition or other professional obligation or face being reported to the Society. The impropriety stems from threatening to use, or actually using, criminal or quasi-criminal proceedings to gain a civil advantage.

115. Section 3.2-12[1] defines regulatory authority as including professional and other regulatory bodies. The Hearing Committee noted that section 14 of the *Peace Officer Act* makes it clear that disciplinary complaints are to be made to the peace officer's employer.⁶⁵
116. On appeal, Mr. Denis argues that the Hearing Committee erred in finding that the cessation of criminal activity constituted a gain or civil benefit to Mr. Denis' client, DL. In other words, leaving aside the point of whether Mr. Denis threatened to make a complaint to a regulatory authority about DN, that any such threat in that regard was not made "in an attempt to gain a benefit for a client", because the cessation of criminal activity by DN did not constitute a gain or benefit to DL.
117. Mr. Denis argues that "The practical effect of the Hearing Committee's decision would be that a victim could never retain counsel to demand the cessation of criminal activity." He argues that it cannot be that a victim's only option is to report a crime and not demand the criminal conduct cease.
118. But Mr. Denis' argument disregards what actually occurred in this case. Mr. Denis did not write to DN that if she did not cease her allegedly criminal conduct, that Mr. Denis or DL would report the same to the police. Indeed, as reflected in DN's response to the CD Letter and in Mr. Denis' testimony before the Hearing Committee,⁶⁶ the police were already aware of DN's conduct.
119. Rather, Mr. Denis effectively threatened to report DN's conduct to her employer as a violation of her code of conduct as a peace officer as leverage to gain a benefit for Mr.

⁶⁵ Merits Decision, para 175.

⁶⁶ Hearing Record, Exhibit 9 at the Appeal Hearing, Tab 1, p 173/21-25.

Denis' client, DL – to resolve DL's private grievances with DN, such that DN would leave DL alone.

120. The Hearing Committee found, with specific references to the evidence,⁶⁷ that Mr. Denis was retained to pursue private or civil remedies against DN. Mr. Denis raised the spectre of a regulatory complaint to add leverage to the civil, not regulatory, benefit he was seeking, being cessation of DN's behaviour and avoidance of litigation.⁶⁸
121. The Hearing Committee cited *Law Society of Ontario v Fuhgeh*, [2020 ONLSTH 75](#) at paragraph 286 that "attempting to use the Society's regulatory mechanism as a way of leveraging ... a litigation position shows bad faith and undermines the integrity of both the legal and regulatory processes."
122. The Appeal Panel dismisses this ground for appeal and finds that the Hearing Committee's decision in relation to the same was reasonable.

(ii) Ground for Appeal: The Hearing Committee erred in denying the request to re-open the hearing

123. Mr. Denis asserts that the Hearing Committee erred in denying his request to re-open the Hearing to adduce new evidence that after the Hearing, DN was charged with criminal harassment of Mr. Denis' clients, and later entered into a peace bond admitting to the conduct.
124. The issues before the Hearing Committee on Citation 2 were whether Mr. Denis threatened to make a complaint to a regulatory authority in an attempt to gain a benefit for his client, DL, and whether such conduct is deserving of sanction.
125. It is Mr. Denis' conduct, not that of DN, that was in issue before the Hearing Committee.
126. Whether or not DN was criminally harassing DL or EL has no bearing on whether Mr. Denis was guilty of conduct deserving of sanction.
127. The test to re-open a hearing to adduce new evidence requires that:
- 1) The evidence could not have been adduced at the hearing;
 - 2) The evidence must be relevant to the issue in question;
 - 3) The evidence must be credible in the sense that it is reasonably capable of belief; and

⁶⁷ Merits Decision, paras 186-191.

⁶⁸ Merits Decision, para 94.

- 4) The evidence must be such that, if believed, it could reasonably affect the result.⁶⁹
128. The second and fourth parts of the test clearly were not met. Evidence as to whether DN was criminally harassing Mr. Denis' clients has no relevance to the issue of whether Mr. Denis was guilty of conduct deserving of sanction, nor could such evidence reasonably affect the result on that issue.
129. The Hearing Committee's decision not to re-open the Hearing was reasonable.

"Sundry Remaining Issues"

130. Paragraph 102 of Mr. Denis' Appeal Submissions state:

It is noted that the panel criticized the Member for "persist[ing] in deny[ing] of any wrongdoing or conduct deserving of sanction" (ignoring that the Member, with the benefit of some distance and hindsight, acknowledged that the first count did amount to a conflict. This is contrary to the decision in *Charkhandeh v College of Dental Surgeons of Alberta*,⁷⁰ which states that **raising a defence is not an aggravating factor.**

[emphasis in original]

131. It is unclear from the Appeal Submissions (which state nothing further on this point) what Mr. Denis is requesting with respect to this point. There are no Appeal Submissions, nor any indication in the Merits Decision, that the Hearing Committee found that Mr. Denis' raising of a defence is an aggravating factor. The statement of the Hearing Committee referenced in Mr. Denis' Appeal Submissions actually comes from the reprimand delivered to Mr. Denis at the sanction hearing. A joint submission on sanction was presented to the Hearing Committee by counsel for the LSA and counsel for Mr. Denis, for a reprimand and a fine, and Mr. Denis did not appeal the Sanction Decision.
132. As such, the Appeal Panel does not comment further on the "Sundry Remaining Issues" point in the Appeal Submissions.

Costs

133. The Hearing Committee considered the factors on costs in *K.C. v College of Physical Therapists of Alberta*, [1999 ABCA 253](#) and ordered that costs were payable by Mr. Denis in the amount of \$15,000.00 to be paid by April 30, 2025. The LSA's Estimated Statement of Costs provided to the Hearing Committee indicated its total costs were \$26,559.75, approximately \$22,000.00 of which related to LSA counsel's time preparing for and attending the hearings on merits and sanction at the rate of \$125/hour plus GST.

⁶⁹ *Palmer v The Queen*, [\[1980\] 1 SCR 759](#).

⁷⁰ *Charkhandeh*, *supra* at para 98.

134. Mr. Denis argues that he "has not committed "serious unprofessional conduct" with the prosecutor commenting that these matters were on the "lower end", nor did he fail to co-operate with investigators nor engage in hearing misconduct." Based on those factors, he asserts that no costs should be awarded, or in the alternative, not a \$15,000.00 cost award, regardless of the outcome of the appeal on either citation. He argues that if any costs awarded, the cost award per sanction should be "\$4,000 each at best".
135. The Appeal Submissions correctly point out that since the Hearing Committee's decisions on merits and sanction, the Alberta Court of Appeal rendered its decision in *Charkhandeh, supra*. While *Charkhandeh* was not the law at the time the Hearing Committee issued its Sanction Hearing Report (including its order with respect to costs), and does not apply retroactively, the Appeal Panel considered the application of *Charkhandeh* with respect to the costs order of the Hearing Committee.
136. In *Charkhandeh*, the Court of Appeal took the opportunity to address the issue of costs in professional disciplinary proceedings. It held:
- 1) The starting point is the statutory wording;
 - 2) Costs are in the discretion of the tribunal;
 - 3) In every case, the decision maker must carefully consider whether costs are warranted, and the quantum of costs;
 - 4) While not a mathematical calculation, the number of allegations and overall success are relevant;
 - 5) Costs are not intended to be a form of sanction or to add another level of punishment. Costs relate to the process of the hearing, not the substance of the charges. The seriousness of the charges is relevant to the sanction, but is not a relevant consideration in awarding costs;
 - 6) An important factor is whether costs have been increased due to the unreasonable or inefficient litigation conduct of either party;
 - 7) This is not an exhaustive list of the factors, but any factors must be relevant to the costs issue itself;
 - 8) The quantum of costs must be reasonable having regard to the nature of the investigation, the allegations and the hearing process, and proportionate to the issues involved, the circumstances of the member, and the overall burden it places on the member;
 - 9) The substance and quantum of the costs incurred by the regulator must be reasonable, and it must also be reasonable to transfer the burden of those costs to the professional;
 - 10) A tribunal should not make an "in gross" percentage award of costs without having a reasonable idea of the types of expenses that are included and whether they were reasonably incurred; and

11) The ultimate award of costs cannot be an unduly onerous or "crushing" burden on the professional; the potential of a punitive costs award should not deprive professionals of the opportunity to make full answer and defence.⁷¹

137. The statutory wording arises from the *Act*, which authorizes the Benchers of the LSA to make rules regarding costs,⁷² and which authorizes a Hearing Committee to make an order requiring the payment to the LSA of all or part of the costs of proceedings respecting conduct deserving sanction within the time prescribed by the order.⁷³

138. Section 99 of the Rules of the LSA states, in part:

Hearing Committee Order for Costs

99(1) Unless the Hearing Committee directs that there will be no order for costs, or the member is found to be not guilty of conduct deserving of sanction on all citations, the Executive Director shall, as soon as possible after the conclusion of its hearing, prepare a statement of costs showing the following charges, costs and expenses incurred in connection with the proceedings against the member to that time:

- (a) investigators' and audit professionals' fees and expenses incurred in carrying out any inquiries or investigations;
- (b) hearing charges at a rate prescribed by the Benchers or by the Audit and Finance Committee, per day or half day of hearing, or part thereof;
- (c) any other expenses incidental to the hearing including, without limitation:
 - (i) fees and expenses of all witnesses, including experts,
 - (ii) fees and expenses incurred in preparing and serving any documents on any person pursuant to Division 1 of Part 3 of the *Act*,
 - (iii) court reporter fees and charges for transcripts;
- (d) fees and expenses of the counsel for the Society, other than the Society's Discipline Counsel,
- (e) reasonable costs for the indemnification of the Society for the cost of services performed by the Society's Discipline Counsel in connection with proceedings, other than those referred to in clause (g),
- (f) adjournment charges at a rate or rates prescribed by the Benchers or by the Audit and Finance Committee; and
- (g) if the Hearing Committee has directed the Executive Director to include them in the statement, any costs and expenses incurred by the Society in connection with all or any proceedings respecting the member's conduct under section 54, 56, 58, 60, 61 or 63 of the *Act*, including reasonable compensation for the indemnification of the Society for the cost of

⁷¹ *Charkhandeh*, *supra* at paras 132, 136, 137, 138, 142, 143, 144, 146, 147, and 149,

⁷² *Legal Profession Act*, RSA 2000, c L-8, s 52(1)(g).

⁷³ *Legal Profession Act*, RSA 2000, c L-8, s 72(1)(c).

services performed by investigators, audit professionals, the Society's Discipline Counsel or other counsel for the Society in connection with those proceedings.

- (2) A Hearing Committee's order for costs
 - (a) may be made on the basis of the statement of costs prepared by the Executive Director or may be otherwise referable to that statement and
 - (b) in a case where the Committee orders payment of the costs of the proceedings,
 - (i) shall be based on the costs and expenses referred to in subrule (1)(a) to (f), and
 - (ii) may, where the Committee so directs, include all or part of the costs and expenses described in subrule (1)(g).
- 139. There were two citations, both of which Mr. Denis was found guilty of. The hearings did not involve numerous citations.
- 140. Mr. Denis made an unsuccessful application to reopen the hearing to adduce new evidence but also agreed to a joint submission on sanction.
- 141. As noted by the Hearing Committee, the costs consist primarily of counsel time which appears very reasonable given the duration of the hearing, the need for written arguments on the merits and the application to reopen the hearing.
- 142. No evidence or submissions were put forth on behalf of Mr. Denis that the costs award of \$15,000.00 would be unduly onerous or a crushing burden upon him.
- 143. The LSA's position on costs, in its Brief, is that the costs award is "neither crushing nor disproportionate, however, a deduction of \$1,575 may be warranted", with regard to the fact that the Estimated Statement of Costs before the Hearing Committee included per diem costs, which are "likely not recoverable from Mr. Denis per *Charkhandeh*."
- 144. In consideration of the foregoing, the Appeal Panel reduces the costs award to \$10,000.00.

Decision

- 145. Based on the foregoing, the Appeal Panel confirms the findings of the Hearing Committee that Mr. Denis was guilty of Citation 1 and Citation 2 and that such conduct constituted conduct deserving of sanction.
- 146. As the sanction was not appealed and arose from a joint submission of the parties which was accepted by the Hearing Committee, the Appeal Panel made no order (nor was one requested) with respect to sanction.

147. The Appeal Panel reduces the costs award to \$10,000.00.

Concluding Matters

148. With respect to the costs of the appeal before the Appeal Panel, the LSA provided an Estimated Statement of Costs in the amount of \$9,562.88 including GST, \$8,337.50 of which relates to LSA counsel preparation and hearing time at the rate of \$125/hour, and \$770.00 for the court reporter's hearing time at the rate of \$110/hour. These costs appear reasonable.
149. In consideration of the *Charkhandeh* considerations regarding costs, the Appeal Panel awards costs of the appeal in the amount of \$3,500.00. Mr. Denis has one year from the date of this decision to pay all costs.
150. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Denis will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated September 10, 2026.

Kelsey Meyer, KC, Chair

Stephanie Dobson, KC

Adam Drew, KC

Afshan Naveed, KC

Mary Ellen Neilson

Sandra Petersson, KC

Erin Runnalls, KC

Louise Wasylenko