THE LAW SOCIETY OF ALBERTA
APPEAL PANEL REPORT

IN THE MATTER OF an appeal to the Benchers of the Law Society of Alberta by RICHARD GORDON CORMIE, a Member of the Law Society of Alberta, pursuant to section 75 of the *Legal Profession Act* from the decision of the Hearing Committee in a report dated June 2, 2014

INTRODUCTION

1. On November 28, 2014, a quorum of seven Benchers of the Law Society of Alberta ("LSA") convened in Calgary to consider an appeal brought by Richard Gordon Cormie from a Hearing Committee decision dated June 2, 2014. The Appeal Panel comprised Nancy Dilts QC, Bencher (Chair), Darlene Scott, Bencher, Fred Fenwick QC, Bencher, Derek Van Tassell QC, Bencher, Neena Ahluwalia QC, Bencher, Tony Young QC, Bencher and Glen Buick, Lay Bencher. The LSA was represented by Nicholas Maggisano. Mr. Cormie was present throughout the appeal and was represented by Dan McDonald QC and Paul Chiswell.

2. Before the Hearing Committee, Mr. Cormie faced the following citation:

> *It is alleged that you acted while in a conflict of interest, and that such conduct is conduct deserving of sanction.*

3. The Hearing was conducted over five days commencing September 9-10, 2013, continuing on January 13-14, 2014, and concluding April 8, 2014. A total of six witnesses gave evidence, including Mr. Cormie. At the conclusion of the hearing on April 8, 2014, the Hearing Panel unanimously found that Mr. Cormie acted in a conflict of interest and that such conduct was conduct deserving of sanction under section 49(1) of the *Legal Profession Act*.

4. The Hearing Panel received submissions of counsel regarding sanction. The LSA sought a lengthy suspension based in part on a significant record of previous suspensions. LSA counsel argued that a suspension of no less than 6 months was appropriate and submitted that a one year suspension would not be unreasonable.

5. Counsel for Mr. Cormie argued that a fine would be appropriate in the circumstances and in the public interest. In the alternative, counsel for Mr. Cormie submitted that if the Hearing Committee considered that a suspension was necessary, it should be brief.

6. The Hearing Panel concluded that Mr. Cormie should be suspended for one year. The Hearing Panel concluded that three special circumstances warranted a one year suspension: i)

Mr. Cormie's prior disciplinary record, ii) the Hearing Panel's belief that there was a high risk of recurrence, and iii) Mr. Cormie's lack of acknowledgement of wrongdoing, refusal to acknowledge wrongdoing, lack of credibility and lack of remorse (Hearing Report paragraph 81).

7. Prior to issuance of the Hearing Panel's reasons, Mr. Cormie gave notice of his intention to appeal the decision and applied for a stay of the order of suspension pending the appeal (Exhibit J2). On April 16, 2014, a stay was granted pending conclusion of the appeal, to remain in place until the conclusion of this appeal and in any event no later than December 16, 2014.

8. Given the timing of this appeal and the uncertainty regarding timing for production of these reasons, on the application of counsel for Mr. Cormie and with no objection from counsel for the LSA, this Appeal Panel ordered that the stay of the suspension continue until the outcome of this appeal and the issuance of these reasons.

RECORD

9. The Appeal Books entered as Exhibits in the Appeal contained the following materials, herein referred to as the "Record":

Binder 1 - Jurisdictional Documents

J1 – Hearing Committee Report dated June 2, 2014

J2 – Notice of Appeal dated April 9, 2014

J3 – Letter of Appointment dated October 24, 2014

J4 – Notice to Attend dated November 3, 2014

J5 – Certificate of Exercise of Discretion dated November 4, 2014

Binders 2 & 3 – Record of Appeal

A – Hearing Committee Report dated June 2, 2014

B – Transcripts of Proceedings
September 9, 2013
September 10, 2013
January 13, 2014
January 14, 2014
April 8, 2014

C – Exhibits from the Hearing, being Exhibits 1 through 28

BACKGROUND

10. At the time of the conduct in question, Mr. Cormie practiced at Scott Hall LLP. Mr. Cormie is a senior member of the LSA, having been admitted in 1973.

11. These matters arise out of Mr. Cormie's representation of E. Corp. and his dealings with E. Corp's then three directors: G.S., D.G. and L.G. Mr. Cormie had a personal and professional association with G.S. prior to 2010 and it was through G.S. that Mr. Cormie met D.G. and L.G. and ultimately incorporated E. Corp. and added D.G. and L.G. as directors. Mr. Cormie and his firm provided legal services to E. Corp. in July 2010.

12. In July 2010, a dispute arose between G.S. and D.G. and L.G. relating to the business affairs of E. Corp. On G.S.'s instructions, Mr. Cormie sent a demand letter dated July 12, 2010 to E. Corp. on behalf of G.S. and his company M. Corp. notifying E. Corp. of G.S. and M. Corp's claim to in excess of $45,000 from E. Corp. and demanding payment by July 16, 2010 (Exhibit 6 Tab 3). The letter provides that if payment is not made, "we will have no other alternative but to take appropriate action for the collection of this debt." It was admitted by Mr. Cormie at the Hearing that at the time of sending this letter, E. Corp. was his client (Hearing Transcripts p. 324 and p. 473).

13. In addition to sending the demand letter, on July 16, 2010 Mr. Cormie instructed a junior litigation associate within his firm to prepare a Statement of Claim on behalf of M. Corp. and G.S. against E. Corp. (Exhibit 21). Mr. Cormie did not inform L.G. and D.G. that his firm, at his direction, was preparing a Statement of Claim against E. Corp. (Hearing Transcripts p. 481).

14. On July 27, 2010 Mr. Cormie sent a letter to L.G. and D.G. and G.S. saying:

> At the present time, I am in an interesting position as Corporate Counsel. I have received a copy of L.G.'s proposal to G.S., as set out in his email of July 25, 2010, subsequent to that I have received G.S.'s response, which I will set out hereunder. In order to make the best of the situation and assuming that G.S.'s response is acceptable, I will act in putting together the relevant documentation required to reorganize the Corporation and in addition will prepare the appropriate Settlement and Indemnification Agreement. If any of you think this is unacceptable or inappropriate, I will resign and not act for any of you in this matter.
>
> (Exhibit 6 Tab 2)

15. On July 30, 2010, Mr. Cormie, on instructions from G.S., sent a letter to E. Corp.'s bank purporting to act as Corporate Counsel for E. Corp. and instructing the bank to freeze all

accounts in the name of E. Corp. (Hearing Transcripts p. 346). Mr. Cormie did not send a copy of that letter to the L.G. and D.G. or notify them that he intended to or did send it; they learned of it from the Bank.

16. In the letter to the Bank, Mr. Cormie wrote:

> We act as Corporate Counsel for E. Corp. and in this capacity we are aware of a conflict between the Directors and Shareholders of the Corporation. This conflict involves the ascertation that certain monies have been misappropriated and it is my belief that this must be solved before the company can recommence operating as usual. Accordingly, I would ask that you freeze the accounts in the name of E. Corp. until such time as the Directors and Shareholders have come to a reasonable settlement of outstanding issues.
> (Exhibit 17)

The Bank did not act on Mr. Cormie's letter.

17. Mr. Cormie remained involved on behalf of G.S. and M. Corp. in ongoing efforts by L.G. and D.G. and G.S. to resolve their differences. On August 13, 2010, Mr. Cormie's firm served the Statement of Claim on E. Corp.

18. At the Appeal, it was conceded that Mr. Cormie acted in a conflict of interest in taking three actions:

i) sending a demand letter dated July 12, 2010 on behalf of G.S. and M. Corp. to his then current client E. Corp.;

ii) instructing a junior litigation associate in his law firm to prepare a Statement of Claim on behalf of G.S. and M. Corp. against E. Corp.; and

iii) writing a letter to Bank A on July 30, 2010 instructing Bank A to freeze the bank accounts of E. Corp.

(Appellant's Brief, paragraph 6)

19. Those matters were not admitted before the Hearing Committee and the vast majority of the evidence heard by the Hearing Committee and the analysis contained in the Hearing Report was to establish whether Mr. Cormie was in a conflict of interest when he took each or any of those actions.

POSITION OF THE APPELLANT

20. The Appellant argues that the Hearing Panel erred in law when it concluded that Mr. Cormie's conduct amounted to conduct deserving of sanction. In particular, Mr. Cormie maintains that the Hearing Committee erred in law when it:

i) failed to give due consideration to evidence that E. Corp. consented to Mr. Cormie acting against E. Corp.,

ii) concluded that a breach of the Rules regarding conflict of interest in the circumstances amounted to conduct deserving of sanction.

21. In addition to these assertions, Mr. Cormie's counsel argues that alleged errors in the hearing report should, in totality, cause this panel to question the integrity and sufficiency of the Hearing Panel's reasons. Counsel for Mr. Cormie both in the Appellant's brief and oral submissions reviewed what the Appellant maintains are errors and misstatements contained in the Hearing Report. Counsel submits that these errors and misstatements formed an incorrect and unfair basis from which the Hearing Committee evaluated Mr. Cormie's credibility.

22. If not successful on an appeal of the Hearing Panel's finding that Mr. Cormie's conduct amounted to conduct deserving of sanction, Mr. Cormie appeals the decision of the Hearing Panel on sanction. Mr. Cormie maintains that a one year suspension is unreasonable and that the Hearing Panel specifically failed to consider the degree of seriousness of the misconduct and other mitigating circumstances in determining an appropriate sanction.

CONDUCT DESERVING OF SANCTION

1. Standard of Review

23. The Appellant refers this Appeal Panel to paragraph 23 of the Member Conduct Appeals Guideline to support his position that the standard of correctness applies to the findings of the Hearing Committee on issues of law, including a review of the Hearing Committee's determination as to what amounts to conduct deserving of sanction.

24. Counsel for the LSA suggests the standard of review has evolved and that the appropriate standard of review of the Hearing Panel's determination of conduct deserving of sanction is a standard of reasonableness.

25. It is well settled and not in issue before this Appeal Panel that on issues of fact, including findings of credibility, and on issues arising from the application of the facts to the law, the

appropriate standard is one of reasonableness: *LSA v. Pagtakhan*, 2013 ABLS 4. The question for consideration is whether this Appeal Panel should apply a standard of reasonableness or one of correctness regarding the Hearing Committee's decision that Mr. Cormie's conduct amounted to conduct deserving of sanction.

26. In *Moll v. College of Alberta Psychologists*, 2011 ABCA 110, Chief Justice Fraser writing for the Court confirmed that in considering a review of a decision of an administrative tribunal responsible for evaluating complaints of professional competence, a standard of reasonableness should apply:

> [T]he parties agree that the standard of review by this Court in respect of both grounds of appeal is reasonableness. I concur. The first issue relates to a question of professional competence which members of Council are uniquely well qualified to review as the internal appellate tribunal under the Act. Accordingly, these questions attract a deferential standard of review [citations omitted]. Similarly, deference is owed to professional disciplinary bodies on the fitness of sanctions and the fact findings that underlie them: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 at paras 41-42. Therefore, the standard of review which this Court applies in reviewing decisions of Council on both issues is reasonableness.

27. The determination of whether Mr. Cormie's conduct amounts to conduct deserving of sanction inextricably intertwines findings of fact with questions of law. Whether the evidence supports the conclusions drawn from it by the Hearing Committee must be reviewed on a standard of reasonableness. As in *Pagtakhan*, this Appeal Panel finds that the standard of review concerning the mixed fact and law decisions with regard to the finding of conduct deserving of sanction is the deferential standard of reasonableness. A "reasonable" decision must be justifiable, transparent and intelligible, and must fall within a range of possible acceptable outcomes defensible in respect of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9. The determinations of the Hearing Committee regarding conduct deserving of sanction therefore demand deference.

2. Did the Hearing Committee err in finding Mr. Cormie's conduct to be conduct deserving of sanction?

28. The Appellant argues that the Hearing Committee failed to properly consider the context in which Mr. Cormie acted and that had it done so, it would have concluded that Mr. Cormie's conduct did not rise to the level of conduct deserving of sanction. Mr. Cormie maintains and has consistently maintained that he was playing the role of intermediary in the parties' efforts to resolve their dispute. His efforts, he argues, were directed towards facilitating a solution to a

dispute between the then directors of a small privately held company. Counsel for the Appellant argues that L.G. and D.G. *permitted* Mr. Cormie to act as intermediary and that at least D.G. acknowledged value in Mr. Cormie serving that role. The Appellant argues that in light of this context, Mr. Cormie's conduct did not rise to the level of professional misconduct.

29. The Hearing Report contains a detailed review of the facts the Hearing Committee considered in determining that Mr. Cormie was in a conflict of interest. From that detailed review it is evident that the Hearing Committee was mindful of the context in which Mr. Cormie acted. The Hearing Committee acknowledges at paragraph 63 of its report that Mr. Cormie considered himself as an intermediary in an effort to resolve the dispute between the parties. Its conclusion, however, was that Mr. Cormie was in a conflict of interest nonetheless and that his conduct amounted to conduct deserving of sanction.

30. It is a reasonable conclusion from the evidence that there was a familiarity between L.G. and D.G. and Mr. Cormie. It is also fair to conclude that at least D.G. found Mr. Cormie easier to deal with in attempting to resolve the dispute than G.S. However, the Hearing Panel concluded that in taking the actions that he did, Mr. Cormie clearly positioned himself against his client, E. Corp. Moreover, the Hearing Panel concluded that his actions were not isolated minor steps. As noted with concern by the Hearing Committee, they represented a repeated and intentional course of conduct that escalated a dispute towards litigation and that could have interfered in the ongoing operations of a small business. Because of these findings, this Appeal Panel concludes that the Hearing Committee's finding of conduct deserving of sanction falls well within the range of possible outcomes and is not to be interfered with.

3. Did the Hearing Committee err in not considering the issue of consent?

31. The Appellant argues that the Hearing Committee failed to consider whether the context in which Mr. Cormie acted amounted to consent to his acting against E. Corp. Counsel for the Appellant argues that the course of conduct of the parties and the context of Mr. Cormie's dealings with the parties allows for the conclusion that L.G. and D.G. consented to his acting against E. Corp. in the dispute involving G.S. and M. Corp. Although the Appellant concedes that there was no express conversation between Mr. Cormie and L.G. and D.G. to confirm consent to his acting against E. Corp., he argues that in rare circumstances, consent can be found in the absence of that conversation. The unique circumstances in this case, he argues,

permits this Appeal Panel to find that the Hearing Panel erred in not considering that the context of the parties' actions was tantamount to consent.

32. L.G. and D.G. wrote at least four emails in which they addressed Mr. Cormie's representation of G.S. and M. Corp. and Mr. Cormie's apparent (undeclared) conflict of interest. The first email, written by D.G., advised Mr. Cormie that "I have no problem with you representing G.S. in this matter" (Exhibit 6 Tab 6). A second email from D.G. dated July 30, 2010 said "I would also have to insist that you recuse yourself as E. Corp.'s Corporate Counsel" (Exhibit 6 Tab 7).

33. L.G., in an email dated July 19, 2010 addressed to G.S. and Mr. Cormie, said "You have also put Gorc C *(sic)* in a pretty clear Conflict of Interest – since the firm already represents E. Corp., they cannot represent you (and they should never have had to)" (Exhibit 6 Tab 4). In an email dated August 3, 2010, L.G. addressed comments specifically to Mr. Cormie and wrote: "I want this to be very clear that, as we have previously communicated to you, in writing, you are NOT representing E. Corp. in this matter (since you indicated opposite in your e-mails Friday afternoon). In the event you decide to continue to be involved in this matter, it must be on the basis that you have chosen to represent G.S. on a personal basis" (Exhibit 6 Tab 9)

34. L.G. and D.G. filed a complaint with the LSA dated August 17, 2010. It is evident from the documents that Mr. Cormie remained involved in the dispute between G.S. and L.G. and D.G. through to late September 2010. In the context of his ongoing involvement, yet having made a complaint to the LSA, D.G. wrote to Mr. Cormie on September 20, 2010 saying:

> Please advise G.S. that I am not going to take L.G.'s route and try and try to resolve things amicably with G.S. any longer. …
>
> Thank you in advance as I believe you to be sensible in negotiating with him.
>
> (Exhibit 22)

35. The Code of Conduct governing Mr. Cormie's conduct at the time these matters arose includes a definition of consent as "fully informed and voluntary consent after disclosure". In the commentary to the Conflict of Interest Rules, Chapter 6, the Code provides further instruction on the meaning of consent:

> Consent in this context will be valid only if full and fair disclosure has been made by the lawyer (to all parties together unless completely impractical) of the advantages and

> disadvantages of, first, retaining one lawyer and, second, retaining independent counsel for each party.

It goes on to provide

> While it is not mandatory that either disclosure or consent…be in writing, the lawyer will have the onus of establishing that disclosure was sufficient and that informed consent was granted.

36. In his testimony, L.G. was clear that he was not informed by Mr. Cormie as to the issue of Mr. Cormie's conflict of interest. He expected that Mr. Cormie understood the Law Society conflict rules (Hearing Transcripts p. 126). D.G.'s lack of understanding as to the issue of conflict of interest is evident throughout her testimony (see Hearing Transcripts p. 185 to 186). L.G. did not know the meaning of conflict of interest (Hearing Transcript p.185) and was the least sophisticated in respect of business dealings.

37. Furthermore, Mr. Cormie did not advise L.G. and D.G. of his intention to either send the demand letter or prepare a Statement of Claim on behalf of G.S. and M. Corp. (Hearing Transcripts p. 490). He did not discuss with them whether a conflict of interest arose by his taking actions, nor did he explain to them their options in light of his conflict of interest (Hearing Transcripts p. 490).

38. None of this evidence supports the conclusion that the unique circumstances alleviated Mr. Cormie of his responsibility of fully informing his client, E. Corp., of the conflict of interest and of seeking its informed, unequivocal and clear consent to him and his firm acting against E. Corp. This argument fails.

39. Having not succeeded in its argument that consent can be implied from the circumstances, the Appellant argues that the Hearing Committee failed to address the issue of consent in its reasons.

40. There is no analysis in the Hearing Report of the issue of consent and whether Mr. Cormie's conflict of interest is "cured" by the presence of informed consent by all parties. However, it is evident from the Record that the Hearing Committee turned its mind to the issue of consent and whether it was in the best interests of all parties that Mr. Cormie act for G.S. and M. Corp. in a dispute against E. Corp. The Record demonstrates that the issue of whether L.G. and D.G. were fully informed of the actions being taken by Mr. Cormie and his firm were fully explored before the Hearing Committee.

41. This Appeal Panel is more than satisfied that the Hearing Committee turned its mind to all of the relevant considerations that arise from an allegation of conflict of interest, including the question of whether L.G. and D.G. consented to Mr. Cormie's representation of G.S. and M. Corp. against E. Corp.

SUFFICIENCY OF REASONS

42. The Appellant maintains that errors were made by the Hearing Panel in its evaluation of Mr. Cormie's credibility and in its recounting of certain facts and that these errors considered together call into question the Hearing Committee's conclusions.

43. The purpose of reasons was expressed by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Reasons are to demonstrate "justification, transparency and intelligibility." They are, in the simplest of terms, to demonstrate that the analysis of the Hearing Committee reasonably supports the conclusions reached. In the decision of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, Abella, J. writing for the Court, characterized this principle as follows: "The reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." It is both the reasons and the outcome that determine whether a decision is a reasonable one. At paragraph 15, Abella J. states:

> In assessing whether the decision is reasonable in light of the outcomes and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir,* at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

44. Of particular value is the analysis at paragraph 18 in *Newfoundland* in which Abella, J. quoted with approval the Respondent's submissions as follows:

> When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive.

45. The reasons of the Hearing Committee in this matter are lengthy and detailed. They review extensively the evidence of the witnesses. While there may be instances where the

language chosen to capture certain evidence is inexact, those instances are minor and do not impugn in any way the overall findings of the Hearing Committee. Looking at the entirety of the Hearing Report, there is no question that the Hearing Panel had a detailed understanding of the facts forming the basis for the citation and applied them carefully to the law.

46. Many of the criticisms identified by Counsel for the Appellant regarding the Hearing Report relate to the Hearing Committee's harsh evaluation of Mr. Cormie's credibility. It is well settled that the Hearing Committee is best positioned to evaluate the credibility of a witness. An Appeal Panel may only interfere in a Hearing Committee's finding of credibility where that finding is unreasonable. In this instance, Counsel for the Appellant falls short of arguing that the Hearing Committee's finding with respect to Mr. Cormie`s credibility was unreasonable. Rather, he argues that the basis for those findings is flawed. He argues that the Hearing Panel's evaluation of Mr. Cormie's credibility is based on insignificant, incorrect or collateral matters.

47. In contrast, the Hearing Report details instances where the Hearing Committee found Mr. Cormie's evidence to be inconsistent or contradictory. The Hearing Report not only identifies the particular instances of Mr. Cormie's evidence on which it relies in finding him evasive, inconsistent and contradictory, but it provides a summary of its overall process for evaluating the evidence of all witnesses and for resolving disparities in the evidence (Hearing Report para 67). While undoubtedly Counsel for the Appellant considers those findings harsh, they are reasonable conclusions supported by detailed analysis. It is evident from the Hearing Report that the Hearing Committee evaluated Mr. Cormie's entire demeanour and the totality of the evidence to reach its conclusions regarding Mr. Cormie's credibility.

SANCTION

1. Standard of Review on an Appeal of Sanction

48. There is no dispute between the parties that on an appeal of a hearing committee's decision on sanction, an appeal panel should not interfere with the sanction unless the sanction is demonstrably unfit or is based on an error in principle.

49. The standard of review of a sanction in professional disciplinary proceedings has been instructed by the Appellate Court's review of sentencing in criminal matters. The principles that apply to an appeal of a criminal sentence have been found to similarly apply in the context of an appeal of a sanction under s. 75 of the *Legal Profession Act*. As in criminal proceedings,

deference is given to the hearing committee who had the benefit of hearing the evidence and evaluating the circumstances of the case through direct evidence. In *R. v. C.A.M.,* [1996] 1 S.C.R. 500 the Court writes:

> The deferential standard of review has profound functional justification. As Iacobucci J. explained in *Shropshire*, at para. 46, where the sentencing judge has had the benefit of presiding over the trial of the offender, he or she will have had the comparative advantage of having seen and heard the witnesses to the crime…The discretion of a sentencing judge should thus not be interfered with lightly.

50. It is therefore only appropriate for this Appeal Panel to interfere in the sanction decision of the Hearing Committee if that sanction is demonstrably unfit.

2. Position of the Parties

51. Counsel for Mr. Cormie argues that the Hearing Committee erred in not first considering the seriousness of Mr. Cormie's conduct to establish an appropriate sanction or range of sanction in the circumstances. Particularly, the Appellant argues that the Hearing Committee failed to consider that Mr. Cormie was acting as an intermediary in a dispute between related parties and believed himself to be serving a useful purpose. Furthermore, the Appellant argues that the Hearing Committee placed an improper emphasis on aggravating factors in assessing the appropriate sanction, rather than considering both mitigating and aggravating factors. In particular, the Hearing Committee failed to consider that Mr. Cormie did not benefit from his involvement in any way, that he did not misuse confidential information gained as counsel for C. Corp., and that there was no injury or loss arising from his involvement.

52. Finally, the Appellant argues that the decision of the Hearing Committee should be set aside because it is so far outside the range of sanctions in comparable cases as to be demonstrably unfit. He refers the Appeal Panel to numerous cases he argued were comparable and instructive and which demonstrate that an appropriate suspension is much less than one year, including: *LSA v. Robert Bishop* (2012); *LSA v. Kristine Robidoux* (2014); *LSA v. William Herman* (1993); *LSA v. Arthur Tralenberg* (2010) and *LSA v. Franciose Belzil* (2009).

53. Counsel for the LSA maintains that the Hearing Committee's sanction is reasonable given its findings with respect to Mr. Cormie's credibility, concerns regarding his governability, and given his significant and relevant disciplinary record.

3. Analysis and Decision

54. The majority of this Appeal Panel concludes that the sanction imposed by the Hearing Committee is not demonstrably unfit.

55. The purpose of sanctioning in law society disciplinary matters originates in section 49(1) of the *Legal Profession Act* which defines conduct deserving of sanction as conduct that is incompatible with the best interests of the public or of the members of the LSA, or that tends to harm the standing of the profession generally. From this, it follows that the primary purposes of disciplinary proceedings is the protection of the public, the maintenance of the highest professional standards and the preservation of public confidence in the legal profession.

56. The following passages from *Boulton v. Law Society* [1994] 1 W.L.R. 512 (C.A.) is often cited to confirm the purpose of sanction in disciplinary proceedings against lawyers:

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.
>
> It is important that there should be a full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave the same way [i*.e., general deterrence*]. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence [*i.e. specific deterrence*]. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission…The profession's most valuable asset is its collective reputation and the confidence which that inspires.

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again…and [he] may also be able to point to real efforts to…redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness…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.

57. The Hearing Panel identified the following concerns with Mr. Cormie's conduct :

i) [Mr. Cormie's] prior discipline record;
ii) the high risk of recurrence; and
iii) [Mr. Cormie's] lack of acknowledgement of wrongdoing, refusal to acknowledge wrongdoing, lack of credibility, and lack of remorse.

58. In its decision on sanction, the Hearing Committee reviewed at length Mr. Cormie's disciplinary history which includes two prior suspensions, one of 3 months in March 2005 and one of 4 months in October 2005. The Hearing Committee expressed grave concern that Mr. Cormie's lack of appreciation regarding conflicts of interest and lack of full and free disclosure to his clients and to the LSA would recur.

59. It is the responsibility of the Hearing Committee in determining an appropriate sanction to assess all of the evidence it receives and to exercise its best judgment about the likelihood of recurrence in order to protect the public interest and the reputation of the profession as a whole. This involves the responsibility of assessing the lawyer's appreciation of the responsibilities that come with membership in the LSA.

60. By their very nature, Law Society decisions are highly individualized. Not only are they based on the particular facts surrounding the citations, they are based on the unique characteristics of the lawyer. The following quote from Gavin MacKenzie's text *Lawyers and Ethics, Professional Responsibility and Discipline* highlights this:

> [T]he penalties imposed for similar cases of misconduct differ widely, both within and among jurisdictions. This is largely due to the fact that one of the main purposes of the process is to protect the public. It may be entirely appropriate that a lawyer who has

proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded.

61. The role of an appellate court in review of penalties is described in *R. v. C.A.M*, as follows:

> Appellate courts, of course, serve an important function in reviewing and minimizing the disparity of sentences imposed by sentencing judges for similar offenders and similar offences committed throughout Canada. [citations omitted] But in exercising this role, courts of appeal must still exercise a margin of deference before intervening in the specialized discretion that Parliament has explicitly vested in sentencing judges. It has been repeatedly stressed that there is no such thing as a uniform sentence for particular crime. [citations omitted] Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender with a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in his country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. For these reasons, consistent with the general standard of review we articulated in *Shropshire*, I believe that a court of appeal should only intervene to minimize the disparity of sentences where the sentence imposed by the trial judge is in substantial and marked departure from the sentences customarily imposed for similar offenders committing similar crimes.

62. Given the Hearing Committee's findings regarding Mr. Cormie's credibility, and concerns regarding the risk of recurrence of his conduct, both of which are clearly articulated in the reasons, the majority of this Appeal Panel concludes that a one year suspension was within the range of sanction that is reasonable in the circumstances. Deference is owed to the Hearing Committee and its appreciation of all of the circumstances, gained by sitting through multiple days of testimony, weighing carefully the evidence and assessing the credibility of each witness. The Hearing Committee is uniquely positioned to determine a reasonable sanction in the circumstances, having had the benefit and advantage of hearing the evidence and assessing Mr. Cormie's response, appreciation and integrity.

63. This decision with respect to sanction was not unanimous. A minority of the Panel agreed that Mr. Cormie's conduct is sanctionable conduct, and that his conduct would have attracted a suspension, but concluded that a one year suspension falls outside the reasonable range of sanction in the circumstances.

DECISION

64. Mr. Cormie's appeal is dismissed.

65. The stay granted by the Hearing Panel and extended by this Appeal Panel is hereby set aside and Mr. Cormie shall be suspended effective upon notice of these reasons for a period of one year.

66. This report and the exhibits entered in this appeal shall be made available to the public, subject to redaction to protect privileged and confidential personal information.

67. Notice of this decision shall be published by the Executive Director in accordance with Rule 106 of the Rules of the LSA.

Dated at Calgary, Alberta this 9th day of February, 2015.

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Nancy Dilts, QC - Chair

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Neena Ahluwalia, QC, Bencher

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Glen Buick, Lay Bencher

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Derek Van Tassell, QC, Bencher

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Darlene Scott, Bencher

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Fred Fenwick, QC, Bencher

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Anthony Young, QC, Bencher