

**THE LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT**

**IN THE MATTER OF THE** *Legal Profession Act*, and  
In the matter of a Hearing regarding the conduct of  
**TODD DEAR**

A Member of the Law Society of Alberta  
Pursuant to Section 56 of the *Legal Profession Act and  
the Rules of the Law Society of Alberta*

**Panel:**

Sarah King-D'Souza, Q.C. – Chair  
Kathleen Ryan, Q.C. – Bencher  
Glen Buick – Lay Bencher/Public Representative

**Counsel Appearances:**

Nicholas Maggisano – for the Law Society of Alberta (**LSA**)  
Todd Dear (Member) – representing himself

**Hearing Date:** October 16, 2014  
**Hearing Location:** 500, 919 11<sup>th</sup> Avenue SW, Calgary, AB

**Report:** January 12, 2015

**REPORT OF THE HEARING COMMITTEE**

**I. INTRODUCTION AND SUMMARY OF RESULT**

1. On October 16, 2014, a Hearing Committee of the Law Society of Alberta convened at the Law Society Offices in Calgary to inquire into the conduct of the Member, Todd Dear. The committee comprised Sarah King-D'Souza, Q.C., Chair, Kathleen Ryan, Q.C., Bencher and Glenn Buick, Lay Bencher/Public Representative. The Law Society was represented by Nicholas Maggisano. The Member self-represented and was present throughout the hearing.
2. The Member faced 9 citations;

- a) **IT IS ALLEGED** that you misappropriated funds received in trust for P.G., and that such conduct is conduct deserving of sanction.
  - b) **IT IS ALLEGED** that you failed to serve your client, P.G., and that such conduct is conduct deserving of sanction.
  - c) **IT IS ALLEGED** that you misappropriated funds received in trust for T.C., and that such conduct is conduct deserving of sanction.
  - d) **IT IS ALLEGED** that you misappropriated funds received in trust for J.M., and that such conduct is conduct deserving of sanction.
  - e) **IT IS ALLEGED** that you misappropriated funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
  - f) **IT IS ALLEGED** that you failed to serve your client, A.B., and that such conduct is conduct deserving of sanction.
  - g) **IT IS ALLEGED** that you failed to be candid with the Law Society in the matter of a complaint by A.B., and that such conduct is conduct deserving of sanction.
  - h) **IT IS ALLEGED** that you failed to be candid with another lawyer, Cyril Bright, in the matter of funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
  - i) **IT IS ALLEGED** that you misappropriated funds received in trust for E. Inc. and such conduct was conduct deserving of sanction.
3. At the commencement of the Hearing, the Member advised that he had received legal advice in this matter. The agreed Statement of Facts, admission of guilt and proposed joint submissions had been crafted between the Member's counsel and counsel for the Law Society, but the Member represented himself at the hearing.
  4. Counsel for the Law Society and the Member presented the Hearing Committee with an agreed Statement of Facts and admission of guilt (Exhibit 35) to all citations.
  5. The Hearing Committee was advised that in error the last citation set out at Paragraph 2.i) above was not included in the Notice to Solicitor but was admitted to by the Member in the agreed Statement of Facts and admission of guilt. The Member advised the Hearing Committee that he realized that eight citations had been sent to hearing and that he was now admitting guilt to nine citations. The Member confirmed that when he signed the agreed Statement of Facts and admission of guilt, he understood and intended that he was admitting guilt to the ninth citation in addition to the eight he had been notified of in the Notice to Solicitor.
  6. On the basis of the representations made and the contents of the agreed Statement of Facts and admission of guilt, the Notice to the Member is amended to include the ninth citation. The Hearing Committee found that all nine citations were proven and that the Member is guilty of conduct deserving of sanction.

7. The Hearing Committee accepted the joint submission of counsel for the Law Society of Alberta and the Member as to a sanction of suspension. The Member did not oppose a suspension, but wished to make submissions in relation to the length of the suspension. Having heard submissions on this point, the Hearing Committee ordered that the sanction on the citations would be a suspension of eighteen months.
8. The issue of costs was argued and the Hearing Committee ordered that the Member pay costs of the hearing in the amount of \$11,000.00.

## II. JURISDICTION AND PRELIMINARY MATTERS

9. Jurisdiction was established by the Law Society and the following Exhibits entered:

Exhibit 1 –	Letter of Appointment of Hearing Committee,
Exhibit 2 –	Notice to Solicitor
Exhibit 3 –	Notice to Attend
Exhibit 4 –	Certificate of Status of the Member
Exhibit 5 –	Certificate of Exercise of Discretion

10. These Exhibits were entered into evidence by consent. There was no objection by the Member or by counsel for the LSA regarding the constitution of the Hearing Committee. The Hearing was conducted in public.

## III. CITATIONS

11. The Member faced 9 citations:
  - a) **IT IS ALLEGED** that you misappropriated funds received in trust for P.G., and that such conduct is conduct deserving of sanction.
  - b) **IT IS ALLEGED** that you failed to serve your client, P.G., and that such conduct is conduct deserving of sanction.
  - c) **IT IS ALLEGED** that you misappropriated funds received in trust for T.C., and that such conduct is conduct deserving of sanction.
  - d) **IT IS ALLEGED** that you misappropriated funds received in trust for J.M. and that such conduct is conduct deserving of sanction.
  - e) **IT IS ALLEGED** that you misappropriated funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
  - f) **IT IS ALLEGED** that you failed to serve your client, A.B., and that such conduct is conduct deserving of sanction.

- g) **IT IS ALLEGED** that you failed to be candid with the Law Society in the matter of a complaint by A.B., and that such conduct is conduct deserving of sanction.
- h) **IT IS ALLEGED** that you failed to be candid with another lawyer, Cyril Bright, in the matter of funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
- i) **IT IS ALLEGED** that you misappropriated funds received in trust for E. Inc. and such conduct was conduct deserving of sanction

#### **IV. EVIDENCE**

- 12. Exhibits 6-34 – all evidence relevant to the citations were entered into evidence by consent.
- 13. Exhibit 35 – the agreed Statement of Facts and admission of guilt in relation to nine citations signed and dated October 15, 2014 by the Member and witnessed by his lawyer at that time, James Rooney, Q.C., was entered into evidence by consent.
- 14. The Hearing Committee reviewed the agreed Statement of Facts and admission of guilt.
- 15. The Member confirmed that:
  - a) He made the admission in the agreed Statement of Facts and admission of guilt voluntarily and free of undue coercion;
  - b) He unequivocally admitted guilt to the essential elements of the citations describing the conduct deserving of sanction;
  - c) He understood the nature and consequences of the admission; and
  - d) He understood that the Hearing Committee is not bound by any joint submissions advanced jointly by counsel.

#### **V. FACTS**

- 16. Counsel for the Law Society and the Member did not call any evidence additional to the facts admitted to in the agreed Statement of Facts and admission of guilt (Exhibit 35) and the supporting documents entered as Exhibits. Pursuant to the agreed Statement of Facts and admission of guilt, the Member admitted *inter alia* the following:

## **INTRODUCTION**

1. Mr. Dear was admitted to the Law Society of Alberta (“LSA”) on November 20, 1998.
2. Since July 2010 he has been corporate counsel at S.G., a commercial real estate company. Before that he alternated between private practice and other corporate counsel roles.

## **COXXXXXXXX**

3. On January 5, 2012 a Conduct Committee Panel directed that the following conduct be directed to a hearing:
  - a) The Member misappropriated trust funds;
  - b) The Member failed to serve his client;
  - c) The Member failed to be candid with the Law Society;
  - d) The Member failed to be candid with another lawyer.
4. In May 2010, the LSA received a complaint from A.B., a former client of Mr. Dear.
5. A.B. gave Mr. Dear a \$500 cash retainer in December 2009 to represent her in a matrimonial dispute and a civil claim against her. At the time Mr. Dear worked at Aurora Law Group (“ALG”) and had access to its trust account.
6. Mr. Dear provided some legal services to A.B. but failed to attend court for her in relation to the civil matter or advise ALG about the matter and as a result a default judgment was awarded against her. He did not render any Statements of Account or provide any reporting or accounting to her. He also did not return her documents to her in a timely manner.
7. Mr. Dear was asked to provide his response to A.B.’s complaint which was received on June 10, 2010. He advised that he had never received funds from A.B. however he did meet with her and agree to assist her. He denied requesting an initial retainer or providing her with an estimate of what his services would cost. He stated that he had only performed some preliminary work for A.B.
8. He further stated that he was dismissed from ALG in March 2010 and did not realize that he still had some of A.B.’s paperwork in his possession. He stated that the material was eventually mailed to A.B. in May 2010, however it was

mailed to the wrong address. Of two packages mailed to A.B., he stated that one was returned to him which was then provided to the LSA and forwarded to A.B. but the other package had not been returned to him yet.

9. Mr. Dear provided a second response to the complaint on January 26, 2011. In his second response he:
  - admitted that he was not honest in his initial response.
  - admitted to having received the funds from A.B. but instead of opening a file and depositing the funds through his office he took the cash home to his wife to use for Christmas shopping.
  - admitted that both packages had been returned to him in June 2010 and that he could not explain why he withheld the documents. Her documents were enclosed with this second response.
  - admitted that he performed services to A.B. but did not provide her with an accounting.
10. When he was dismissed from ALG he failed to advise ALG of A.B's matter. Another lawyer at ALG, Cyril Bright, took on her matter and had the default judgment set aside. Mr. Bright asked Mr. Dear about a \$500 retainer which he denied. That denial was untrue. He later also admitted that he did provide A.B. with an initial estimate of the costs of his legal services, contrary to his initial response to the complaint.
11. The arrangement that Mr. Dear had with ALG was that he would be paid \$1,000 weekly for the first four months, after which time he would receive a 37.5% commission. If the funds had been deposited into trust, and they had been earned, he would only have been entitled to a portion of them pursuant to this arrangement. Mr. Dear was aware of this when he took the funds and that:
  - a) Taking the funds, rather than depositing them in ALG's trust account, was improper; and
  - b) He took the funds before he had earned any fees, and so before he was entitled to them
12. An Investigation Report into these matters was prepared which Mr. Dear confirms is accurate.

COXXXXXXXX

13. On January 5, 2012 a Conduct Committee Panel directed that the following conduct be directed to a hearing:
  1. The Member misappropriated trust funds.
14. In August 2010 information was brought to the attention of the LSA by ALG, Mr. Dear's former firm. It had learned that E. Inc., a client of Mr. Dear, had provided him with a \$2,000 retainer cheque in relation to a litigation matter on September 29, 2009 payable to Mr. Dear. The payment was received when Mr. Dear was employed at Fletcher Law Firm ("FLF") and had access to its trust account, prior to his employment with ALG, which began on November 1, 2009.
15. A letter was sent to Mr. Dear on February 9, 2011 requesting his written response pursuant to Section 53 of the Legal Profession Act.
16. Mr. Dear's response was received on February 24, 2011. In it he admitted that he received funds from the client and did not place them into trust. Instead, the cheque was deposited into his personal bank account and used for his personal expenses. In this letter he stated that he invoiced E. Inc. when requested, but he did not have a copy of the invoice. Mr. Dear has since located a copy of the invoice.
17. Mr. Dear provided services to the client but did not render any statements of account or provide any reporting or accounting to the client, other than the invoice above. On March 31, 2011 he forwarded emails and other documents to the LSA which indicate that work was completed for the client.
18. The arrangement that Mr. Dear had with FLF was that Mr. Dear would be paid a 67% commission for the clients he represented. The arrangement that Mr. Dear had with ALG was also based on a percentage of fees billed, as set out above. If the funds had been deposited into trust, and they had been earned, he would only have been entitled to a portion of them pursuant to these arrangements. Mr. Dear was aware of this when he took the funds and that:
  - a) Taking the funds, rather than depositing them into FLF's or ALG's trust account, was improper; and
  - b) He took the funds before he had earned any fees, and so before he was entitled to them

19. An Investigation Report into these matters was prepared which Mr. Dear confirms is accurate.

**COXXXXXXXX**

20. On January 5, 2012 a Conduct Committee Panel directed that the following conduct be directed to a hearing:
  1. The Member misappropriated trust funds;
  2. The Member failed to serve his client.
21. On September 17, 2010, the LSA received a complaint from P.G., a former client of Mr. Dear.
22. P.G. retained Mr. Dear to represent him in relation to a Provincial Court default judgment against him. He gave Mr. Dear an \$800 cash retainer in November 2009. Mr. Dear did take some steps to set aside the default judgment but did not complete the work required to do so or advise ALG on the status of the matter upon his departure from ALG. As a result of enforcement proceedings P.G.'s bank accounts were frozen and payments he had made bounced.
23. Although he performed services for P.G. he did not render any Statements of Account or provide any reporting or accounting to him. He also did not return P.G.'s file to him when requested to do so. Mr. Dear stated that he attempted to return P.G.'s documents to him in May 2010 by mail however the mail was returned to him. He did not attempt to resend the documents to P.G. or send them to him in any other way.
24. Mr. Dear responded to this complaint on January 27, 2011. He admitted to having received the funds from P.G. but instead of opening a file and depositing the funds through his office, ALG, he took the cash home to his wife to use for Christmas shopping. If the funds had been deposited into trust, and they had been earned, he would only have been entitled to a portion of them pursuant to his arrangement with ALG, set out above. Mr. Dear was aware of this when he took the funds and that:
  - a) Taking the funds, rather than depositing them into ALG's trust account, was improper; and
  - b) He took the funds before he had earned any fees, and so before he was entitled to them



25. During the course of the investigation into this matter Mr. Dear indicated that he had two additional matters to report.
26. On April 15, 2011 Mr. Dear provided the following details about the two additional matters:
- Mr. Dear accepted a \$500 retainer from T.C. in November 2009 relation to a divorce matter. At the time he was employed by ALG and had access to its trust account. He stated that he provided the cheque to his wife and it was deposited into their joint account for personal expenses. He further stated that he performed work on this matter and used some of the proceeds to pay for the court filing fee and a process server. Whatever he did not spend he kept for his own personal use.
  - Mr. Dear accepted a \$1,000 retainer from J.M. in September 2010 while he was employed at S.G., his current employer, in relation to a potential commercial transaction. The amount was deposited into his joint account with his wife and used for personal expenses. He did not have access to a trust account at the time. Mr. Dear provided advice to J.M. and waited for further directions. He stated that he performed \$125 in services to J.M. and returned \$875 after J.M. decided not to proceed with his plans.
27. Although he provided services to T.C. and J.M. he did not render Statements of Account or provide any other reporting or accounting to them concerning the retainers.
28. With respect to the T.C. matter, if the funds had been deposited into trust, and they had been earned, he would only have been entitled to a portion of them pursuant to his arrangement with ALG, set out above. Mr. Dear was aware of this when he took the funds and that:
- a) Taking the funds, rather than depositing them into ALG's trust account, was improper; and
  - b) He took the funds before he had earned any fees, and so before he was entitled to them
29. With respect to the J.M. matter, Mr. Dear was not employed by a law firm at the time and did not have access to a trust account. Nevertheless Mr. Dear was aware when he took the funds that:

- a) Taking the funds for his own personal use, when he did not have a trust account, was improper; and
  - b) He took the funds before he had earned any fees, and so before he was entitled to them.
30. Although he returned \$875 to J.M. that was only after he had spent the majority of the funds on his personal expenses. He later replaced the funds.
31. As a result of his employment as corporate counsel Mr. Dear had provided the LSA with a Statutory Declaration and Undertaking sworn on June 29, 2010. His conduct in relation to the J.M. matter breached the undertaking. The undertaking was that:
- “I hereby undertake that I will not practise law or provide any legal services outside the scope of my employment or contract, and that I will not receive or hold trust money either within or outside the scope of my employment or contract unless in compliance with Rule 135.
- I hereby undertake that I will not receive or hold trust money (in Alberta) or operate a client’s trust account.”
32. An Investigation Report into these matters was prepared which Mr. Dear confirms is accurate.

## **CONCLUSION**

33. Mr. Dear admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. Mr. Dear admits that all correspondence sent to or by him was received or sent by him on or about the dates indicated, unless stated otherwise.
34. Mr. Dear admits that his conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally. He further admits guilt to the following citations:
1. IT IS ALLEGED THAT you misappropriated funds received in trust for P.G., and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED THAT you failed to serve your client P.G., and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED THAT you misappropriated funds received in trust for T.C., and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED THAT you misappropriated funds received in trust for J.M., and that such conduct is conduct deserving of sanction.
  5. IT IS ALLEGED THAT you misappropriated funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
  6. IT IS ALLEGED THAT you failed to serve your client A.B., and that such conduct is conduct deserving of sanction.
  7. IT IS ALLEGED THAT you failed to be candid with the Law Society in the matter of a complaint by A.B., and that such conduct is conduct deserving of sanction.
  8. IT IS ALLEGED THAT you failed to be candid with another lawyer, Cyril Bright, in the matter of funds received in trust for A.B., and that such conduct is conduct deserving of sanction.
  9. IT IS ALLEGED THAT you misappropriated funds received in trust for E. Inc., and that such conduct is conduct deserving of sanction.
35. The Hearing Committee accepted the Member's admission of guilt and the Hearing Committee found the admission of guilt in a form acceptable to the Hearing Committee and pursuant to section 60(4) of the *Legal Profession Act*. The admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member described therein is conduct deserving of sanction in relation to all citations.

## **VI. CONCLUSIONS ON CITATIONS**

17. The Hearing Committee having accepted the admission of guilt from the Member on all citations finds the Member guilty on all citations.

## VII. SUBMISSIONS ON SANCTION

18. Counsel for the Law Society entered the Member's record, with the consent of the Member. This record was entered into evidence as Exhibit 36. Counsel for the Law Society also entered an Estimated Statement of Costs into evidence by consent of the Member as Exhibit 37. The Estimated Statement of Costs is \$15,536.62. Counsel for the Law Society entered a proposed list of practice review conditions to commence on the Member's reinstatement as Exhibit 38 with the Member's consent.
19. The joint submission was that the Member be suspended not disbarred. The length of the suspension was not part of the joint submission. Counsel for the Law Society was asking for a suspension of eighteen months and the Member was asking for a suspension of something less than that. Part of the joint submission was a referral to Practice Review and certain agreed-upon conditions to be implemented by Practice Review upon the Member's reinstatement to practice.
20. Counsel for the Law Society argued that with respect to the sanction, disbarment is not necessarily an automatic result of misappropriation. Mitigating factors in this case were that the Member had no record, he had admitted guilt and was cooperative and had self-reported two matters. Furthermore, he had taken steps to address the addiction issues he was suffering from during the time of the misappropriation.
21. Counsel for the Law Society argued that extenuating circumstances took this matter out of the usual type of misappropriation where disbarment is in order. Counsel provided case law to the Hearing Committee and noted that there were no cases counsel could find where the misappropriation garnered anything less than eighteen months' suspension. In fact, eighteen months was in the low range in such cases.
22. Counsel for the Law Society argued that with respect to the Member's level of intent, his level of intent to take money from others was at the highest level and he was fully intentional in relation to his misappropriation of funds. The Member's actions caused serious impact or injury to his clients and to the law firms with whom he was associated at the time. There were five separate incidents of misappropriation over the course of a year and the Member's activities included breach of trust.
23. The Member submitted he did not oppose the suspension, but wished to make submissions in relation to the length of the suspension. The Member regretted the circumstances and wished they had never occurred. Initially he found it difficult to comprehend the extent of the damage that he had caused. The length of time between the events and this matter coming to hearing gave him a better opportunity

to reflect and appreciate the serious nature of his activities and his failure to meet his professional obligations. The Member did not try to make excuses.

24. The Member advised that he had taken full advantage of the professional support that had been offered to him and he was fully committed to his recovery program. The Member had not been suspended on an interim basis prior to the hearing and at the time of the hearing was gainfully employed as corporate counsel. As of the date of hearing his potential for continued employment in a non-lawyer position with his employer was unknown. His employer had not made any commitment to retain his services should he be found guilty of the citations at the hearing. On the other hand, his employer had provided strong letters of reference in support of the Member.
25. The Member was accepting that he might lose his position with his current employer and was aware that there could be an impact on his mental health and current stability in relation to his addictions as a result.

## **VIII. DECISION AS TO SANCTION**

26. The following provisions of the Code of Professional Conduct (as it then was) are engaged:

- a) Chapter 1

Relationship of the Lawyer to Society and the Justice System

STATEMENT OF PRINCIPLE

A lawyer shares the responsibilities of all persons to society and the justice system and, in addition, has certain special duties as an officer of the court and by virtue of the privileges accorded the legal profession, including a duty to ensure that the public has access to the legal system.

RULES

- a) Rule 1. A lawyer must respect and uphold the law in personal conduct and in rendering advice and assistance to others.
- b) Rule 3. A lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration.
- c) Rule 6. A lawyer must be courteous and candid in dealings with others.
- d) Rule 7. A lawyer's position must not be used to take unfair advantage of any person or situation.

- b) Chapter 2

Competence

## STATEMENT OF PRINCIPLE

A lawyer has a duty to be competent and to render competent services.

## RULES

- a) Rule 1. A lawyer, to be competent, must possess the skills and attributes relevant to each matter undertaken on behalf of a client and must apply them in a manner appropriate to that matter.
- b) Rule 2. A lawyer must not act or continue to act in any matter in which it may be reasonably foreseen that the lawyer will be unable for any reason to provide competent services.
- c) Rule 3. A lawyer who is prevented from acting or continuing to act by Rule #2 must make reasonable efforts to assist the client in obtaining competent representation.
- d) Rule 5. A lawyer must refrain from conduct that impairs the lawyer's capacity or motivation to provide competent services.

### c) Chapter 3

#### Relationship of the Lawyer to the Profession

## STATEMENT OF PRINCIPLE

A lawyer has a duty to uphold the standards and reputation of the profession and to assist in the advancement of its goals, organizations and institutions.

## RULES

- a) Rule 1. A lawyer must refrain from personal or professional conduct that brings discredit to the profession.
- b) Rule 3. A lawyer must respond on a timely basis and in a complete and appropriate manner to any communication from the Law Society that contemplates a reply.

### d) Chapter 4

#### Relationship of the Lawyer to other Lawyers

## STATEMENT OF PRINCIPLE

A lawyer has a duty to deal with all other lawyers honourably and with integrity.

## RULES

- a) Rule 1. A lawyer must not lie to or mislead another lawyer.

e) Chapter 8

The Lawyer and the Business Aspects of Practice

STATEMENT OF PRINCIPLE

Except where a higher standard is imposed by this Code, a lawyer in conducting the business aspects of the practice of law must adhere to the highest business standards of the community.

RULES

- a) Rule 3. A lawyer having personal responsibility for a financial commitment incurred in the business aspects of practice must ensure that such commitment is fulfilled unless there is reasonable justification for the lawyer's failure to do so.

f) Chapter 9

The Lawyer as Advisor

STATEMENT OF PRINCIPLE

A lawyer has a duty to provide informed, independent and competent advice and to obtain and implement the client's proper instructions.

RULES

- a) Rule 4. A lawyer must not render advice unless competent to do so.  
b) Rule 13. A lawyer must be punctual in fulfilling commitments made to a client and must respond on a timely basis to all client communications that contemplate a reply.  
c) Rule 14. A lawyer must keep a client informed as to the progress of the client's matter.  
d) Rule 18. A lawyer must promptly inform the client of any material error or omission in connection with the lawyer's representation irrespective of whether it is capable of rectification.

27. Section 49 (1) of the *Legal Profession Act* states:

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.

28. The *Legal Profession Act*, s. 72(1) requires a Hearing Committee, on finding a Member guilty of conduct deserving sanction, to disbar, suspend, or reprimand the Member.
29. The primary purpose of disciplinary proceedings is: (1) the protection of the best interests of the public (including the Members of the Society) and (2) protecting the standing of the legal profession generally.
30. One purpose of disciplinary proceedings is to be sure that the offender does not have the opportunity to repeat the offence, which can be achieved either by a suspension or disbarment.
31. The second purpose is to maintain the reputation of the legal profession:

*"A profession's most valuable asset is its collective reputation and the confidence which that inspires."* Bolton v. Law Society, [1994] 2 All ER 486 at para. 492 (C.A.)
32. The privilege of self-governance is accompanied by certain responsibilities and obligations. The impact of any misconduct on the individual and generally on the profession must be taken into account:

*"This public dimension is of critical significance to the mandate of professional disciplinary bodies." "The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing":* Adams v. The Law Society of Alberta, [2000] A.J. No.1031 (Alta. C.A.)
33. The sanctioning process should involve a purposeful approach. Sections 60 and 61 of the Hearing Guide set out the general and specific factors that this Committee must consider in determining what sanction to impose. Factors which relate most closely to the fundamental purposes outlined above will be weighed more heavily than other factors. The final sanction must be one which is consistent with the fundamental purpose of the sanction process.
34. This Hearing Committee considered the following general factors to be of relevance in this case:
  - a) The need to maintain the public's confidence in the integrity of the profession and the ability of the profession to govern its own members.



- b) Specific deterrence of the Member, from engaging in such conduct again.
  - c) Incapacitation of the Member (through disbarment or suspension)
  - d) General deterrence of other members, from engaging in such conduct for themselves.
  - e) Denunciation of the conduct.
  - f) Rehabilitation of the Member.
  - g) Avoiding undue disparity with sanctions imposed in other cases.
35. This Hearing Committee considered more specific factors in making its decision as to sanction:
- a) The Member's conduct raised concerns about protection of the public.
  - b) The Member's conduct raises concerns about maintaining public confidence in the legal profession.
  - c) The Member's conduct raises concerns about the ability of the legal system to function properly.
  - d) The Member's conduct raises concerns about the ability of the Law Society to effectively govern its members.
  - e) Level of intent: the Hearing Committee is advised that there was the highest level of intent on the Member's part to misappropriate funds.
  - f) Impact or injury, potential or actual.
  - g) Number of incidents involved.
  - h) Length of time involved.
  - i) Whether there was a breach of trust.
36. Special circumstances both aggravating and mitigating. There were both in this instance:
- a) In mitigation, the Member has no prior discipline record, he disclosed two additional matters to the LSA, his reaction to the disciplinary process was that he took responsibility for his actions and he has taken steps to address his alcoholism appropriately with professional support. He has also been gainfully employed as a lawyer without further incident until now; and
  - b) Aggravating factors are that the Member failed to recompense his employers for theft, which he has explained stating that they no longer wanted to communicate with him and also in relation to one employer there was possibly

a setting off, and that the motivations for his actions were purely self-interested.

37. The following case law was provided by Counsel for the LSA in relation to sanctioning:

- a) Law Society of Alberta v. Nickless [2010] L.S.D.D. no. 203;
- b) Law Society of Alberta v. Anderson[1996] L.S.D.D. No. 302; and
- c) Law Society of Alberta v. McGechie [2007] L.S.D.D. No.139.

38. The following excerpts from these cases are noteworthy:

- a) Law Society of Alberta v. McGechie [2007] L.S.D.D. No.139:

*“18. There is no “rule” that misappropriation of trust funds must result in disbarment. Each case must be looked at on its own merits and the sanction must be individually crafted to suit the behavior being sanctioned.”*

- b) Law Society of Alberta v. Nickless [2010] L.S.D.D. no. 203:

*“80. [80] As indicated above the member candidly admitted that the \$5,815.00 was retained by the Member and used by him to buy Christmas presents which were ultimately not delivered and were pawned for cash and to repay some personal debts of the member.*

*81. [81] Ms Stevens takes the position that despite this admission, the Member did not misappropriate or wrongfully convert these funds, but rather the funds were retained by the Member on the basis of some sort of colour of right, namely that the \$5,815.00 constituted the Member’s fees in respect of the matter. Ms Stevens indicates that the Member clearly has admitted guilt with respect to the manner of handling these funds, and in particular, that he failed to properly handle these trust funds (Citation 8), that he did not provide appropriate information concerning the ultimate fees and disbursements that were being charged, presumably in the face of the original contingency fee arrangement (Citation 9) and by overcharging R.W. for disbursements (Citation 10). In a nutshell, Ms Steven’s position is that the Member’s handling of the \$5,815.00 breached a number of the accounting and retainer requirements of the LSA, but was not tantamount to misappropriation or wrongful conversion.*

82. [82] As was indicated above, much was made of the fact that Mr. Boyd was not pursuing the Member for the return of any portion of the \$5,815.00.

83. [83] The question for this Committee is that given this evidence, has the LSA proven that the Member misappropriated or wrongfully converted trust monies in the sum of \$5,815.00?"

...

"86. [86] However, with respect to the sum of \$5,815.00, the Hearing Committee concludes that the Member in fact wrongfully converted all or a portion of those funds. The Committee concludes that this is simply not an issue of failing to comply with the requirements of handling of trust property, failing to properly provide an account for those funds, overcharging for disbursements and the like. The reality is that the sum of \$5,815.000 was the property of R.W. and the only reason that the Member would be entitled to take those funds and use them to buy Christmas presents and pay off personal debts was if the Member had run the funds through a trust account and had properly rendered an account for the entirety of those funds. In this case, the Member frankly admitted that he knew he should not have accounted for those funds as he did pursuant to Exhibit 15, and that he knew that what he should have done was take the entirety of the \$7,300.00, put it into Mr. Boyd's trust account, render an account from Boyd and Associates for legal fees and disbursements and provide the balance of funds, if any, to R.W. The Member frankly admits that he did not do that. Even if it was proper to have delivered \$1,485.00 in cash to R.W. at 10:00 pm in a second cup parking lot, the Member knew that the remainder \$5,815.00 should have been dealt with as set forth above, namely to have it run through the trust account of Mr. Boyd. The Committee concludes that by failing to do so, the Member wrongfully converted the funds.

87. [87] Ms. Stevens, and indeed Mr. Groome, seemed to think that, because there was no allegation by Mr. Boyd that the Member owed him any money, somehow this made things right. The reality is that if the funds had been properly deposited in Mr. Boyd's account, the \$5,815.00 would have been in a lawyer's trust account and it would have been up to Mr. Boyd (or perhaps the Member) to render an account. If in fact that account was for \$5,815.00, then R.W. would have at least had an account which he could have dealt with either by negotiation with Mr. Boyd, by complaint to the Law Society, or by taxation. As a result of the acts of the Member, however, that did not occur. There is no evidence before the Committee that any account was provided to R.W. other than perhaps the scrawled note in Exhibit 15. By taking the

*\$5,815.00 cash for his personal use, the Member precluded R.W. from taking any of these courses of action, and as a result, the Committee concludes that the Member wrongfully converted the funds.”*

...

*“96. [96] At the outset of his submissions, Mr. Groome, indicated that he and Ms. Stevens were jointly submitting that the appropriate sanction in this matter would be an 18 month suspension with a requirement to submit to Practice Review prior to any application for reinstatement.”*

....

*“117. [27] The Hearing Committee determined that it would accept the joint submission of counsel with respect to the length of suspension. The Hearing Committee concluded that as a result of the number and gravity of the citations, the fact that there was wrongful conversion of public monies, that there were 4 separate incidents where the Member’s ability to properly represent clients was impaired by his drug use and that those incidents were public and in a court house setting and the complaints came from court house personnel and the judiciary and that the fact the Member initially deceived the Law Society with respect to his impairment, were all factors that necessitated a lengthy suspension.*

*118. [28] The Committee noted that there were indeed mitigating factors in the current circumstances which did not require the ultimate sanction of disbarment. The Committee specifically noted that there were no elements of ungovernability or credibility at the Hearing unlike the situations in Williamson and Elliott. The Committee concluded that indeed all of the citations arose from the Member’s incompetence by reason of his addiction to narcotics and the Committee indicated that they agreed with the submissions of Ms. Stevens that a pure punitive sanction of disbarment would not be in the public interest nor in the interest of the profession, and that indeed that the Law Society, in the public interest, should focus more on rehabilitation of members in circumstances where their ability to practice is impaired by mental illness or addictions. It was noted that the Law Society is taking steps in this regard by reason of the establishment of its Lawyers at Risk Task Force. The Committee concluded that the public would be properly protected if sufficient conditions were imposed upon the Member’s reinstatement to practice if that were ever to occur.*

119. [29] *With respect to costs, the Committee was prepared to give the Member a small break on the total costs due to the lack of success by the LSA in proving misappropriation and fixed the costs at \$8,500.00. Recognizing the Member's financial circumstances, the Committee concluded that the costs should be paid prior to any application for reinstatement and this would allow the Member to pay over time if that were his preference.*"

c) The Law Society of Alberta v. Anderson[1996] L.S.D.D. No. 302:

*"27. Here we are primarily concerned with the public confidence in the legal profession which is independent and self-governing. The preservation of the integrity of the legal profession is largely dependent upon the honour of each of its members. When we take the oath to gain admission to the Law Society, we each, in effect, swear to uphold that honour. Any breach of that code of honour involving dishonesty attracts punishment regardless of the mitigating circumstances. It is a fundamental tenet of a self-governing society such as the legal profession that each member takes responsibility for his or her actions."*

....

*"29. The penalties imposed in those cases may have been too lenient. There is a strongly held view that whenever monies are misappropriated or a fraud has been committed by a lawyer, disbarment should be the automatic penalty no matter what the mitigating circumstances. While there is no consensus that this ought to be the premise upon which we carry out these proceedings, it is clear that there is considerable concern that offences involving dishonesty are being treated too lightly. The difficulty in this case, however, is that if there ever is a situation which permits leniency, this is it.*

*30. While questions of public confidence and deterrence are fundamental to this issue, the following mitigating factors in this case are identified:*

- 1. The Member did not embark upon a dishonest strategy out of avarice.*
- 2. The Member has a long career of service to his clients and the community. The evidence supports our view that the Member is an honourable man and there is no significant risk to the public in the future. Not only his family, but many of his peers and clients have supported his assertion that this is very much an aberration and will never happen again.*

3. *He has suffered a great deal of shame, and loss of reputation, not to mention his loss of partnership and practice.*
4. *The amounts involved are comparatively small.*
5. *As soon as he was questioned about the cheque which triggered the investigation, he candidly confessed to everything and cooperated fully with the Law Society investigation, and voluntarily went on the inactive list on March 30, 1995.*
6. *He has no record.*
7. *He has expressed remorse over what has happened and has sought psychological help.”*

39. Taking into account the general factors and the specific factors, the evidence, the joint submissions from Counsel for the LSA and the Member, the case law provided and having considered the letters of support and letters from the professionals engaged with the Member, the Hearing Committee directed that there be an eighteen month suspension.
40. The Hearing Committee ordered that following the suspension, the Member be directed to Practice Review and that he complies with the conditions as set out in Exhibit 38 until the Manager of Practice Review relieves him of the necessity of complying with those conditions. The proposed conditions in Exhibit 38 are only a recommendation to the Manager of Practice Review, who maintains discretion in relation to making variations to those set out in Exhibit 38 or making any new conditions that Practice Review may consider necessary as part of the reinstatement process.
41. The parties were invited to make submissions in relation as to whether or not there ought to be a referral to the Attorney General. Counsel for the Law Society submitted that the referral ought to be made if in the opinion of the Hearing Committee there is a reasonable belief that a crime may have been committed. Counsel argued that there was such a reasonable belief because even if the Member's work was commensurate with the funds he took, he was not entitled to all of the funds, only a portion based on the terms of his contract with his employer, and a portion should have gone to his employer.
42. The Member asked that the matters not be referred to the Attorney General but acknowledged that if this is the common practice, then he did not oppose it. A referral ought to be made where there is a reasonable belief that a crime may have been committed. This is important for the protection of the public. The Hearing Committee made a referral to the Attorney General.

43. With respect to costs, the Hearing Committee was cognizant that the Member's future is uncertain as to employment. He admitted the conduct and took responsibility for his actions. Part of the goal of sentencing is rehabilitative and the suspension is very likely to affect the Member's economic situation.
44. The Hearing Committee reviewed the costs of the investigations into the Member's conduct and adjusted by 50% and thus reducing the total costs payable by \$4,500.00 to account for approximately half of the cost of the investigation disbursement. The reduction was in part because in light of the Member's full cooperation from the beginning the full extent of investigation only confirmed what was already known. To be clear, the Hearing Committee also appreciates the need for the Law Society to perform its due diligence to ensure that no hidden matters are missed.
45. The Hearing Committee ordered that the costs be paid within 2 years. The Hearing Committee did not make payment of the costs in full a pre-condition of reinstatement, but the Member was encouraged to get the costs paid before reinstatement.
46. The suspension of the Member was ordered to commence on November 14, 2014. This decision was made in the interests of the Member's employer so as to provide a transition period for the Member's files to be transferred to new counsel. The Member indicated that he had 205 active litigation files and that this time would be necessary for his employer to be able to provide instructions and directions to new counsel with respect to the files.

## **CONCLUDING MATTERS**

47. The Exhibits from this hearing shall be made public subject to any redactions to ensure that members of the public are not identified and that the Member's young family is not exposed to public embarrassment as a result of any information provided with respect to the Member.
48. Exhibit 39 shall be redacted in full and not made available to the public.
49. Any transcript of the proceedings may be made available to the public, subject to redactions to ensure that members of the public are not identified and that the Member's young family is not exposed to public embarrassment as a result of any information provided with respect to the Member.
50. There shall be a Notice to the Profession.

51. There shall be a referral to the Attorney General.

**DATED** this 12<sup>th</sup> day of January, 2015 at the City of Calgary in the Province of Alberta.

Per: \_\_\_\_\_  
**SARAH KING D'SOUZA, Q.C.**  
**CHAIR**

Per: \_\_\_\_\_  
**KATHLEEN RYAN, Q.C. BENCHER**

Per: \_\_\_\_\_  
**GLEN BUICK, LAY BENCHER**