IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
RICHARD GORDON CORMIE, A MEMBER OF THE LAW
SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

It was alleged that the Member acted in a conflict of interest. His clients were a corporation and, through it, three directors of the corporation. The Hearing Committee found the allegation proven and suspended the Member. A stay of suspension was granted on April 16, 2014.

Counsel: Ms. L. J. MacLean appearing for the Law Society of Alberta
Mr. D. A. McDermott, QC appearing for the Member

A. INTRODUCTION

1. On **September 9-10, 2013**, a Hearing Committee convened at the Law Society of Alberta (LSA) office in Calgary, Alberta, to inquire into the conduct of Richard Gordon Cormie (the Member). The Hearing continued on **January 13-14, 2014**.

2. Following suspension of the Member as per the Hearing Committee's decision on **April 8, 2014** the Member brought a stay application which was heard on **April 16, 2014**. The decision in the stay application is recorded elsewhere.

3. A Notice to Solicitor was issued on **August 27, 2013**. (**Exhibit 2**)

B. JURISDICTION AND OTHER PRELIMINARY MATTERS

4. **Exhibits 1 through 4**, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend, and the Certificate of Status of the Member respectively establish jurisdiction of the Hearing Committee.

C. PUBLIC HEARING

5. The Hearing was held in public.

D. CITATION

6. **Exhibit 2** sets out the Citation against the Member reading:

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

E. WITNESSES

7. In addition to the Member, the Hearing Committee heard evidence from the following:

   (i) G.S., Director of E Corp. and owner of M Corp.;

(ii) L.G., Director and President of E Corp.;

(iii) D.G., Director and V.P. Operations of E Corp.;

(iv) G.E., Bank A employee; and,

(v) Ashley Reid, an associate of Scott Hall, LLP, at the material time.

F. RELEVANT DATES

July 12, 2010 – the Member sent a Demand Letter to E Corp. on behalf of G.S. and M Corp. (the Demand Letter), stating that he and his firm acted on behalf of M Corp. and demanded payment from E Corp., another client of his and of his firm.

July 19, 2010 – L.G. sent an email to G.S. and the Member in response to the Demand Letter, which stated that G.S. had put the Member in a "pretty clear conflict of interest."

July 19, 2010 – the Member's time entry indicates that he prepared a memo to Ashley Reid (Ms. Reid) in relation to the "action against E Corp.".

July 27, 2010 – the Member sent an email to G.S., D.G. and L.G. acknowledging that he was in an "interesting position as Corporate Counsel" and offered to resign if they did not agree with him continuing to act.

July 28, 2010 – Pursuant to the C Corp. settlement, the Member sent E Corp. a trust cheque for $6,816.53 and a letter regarding invoices for four E Corp. accounts (**Exhibit 6 tab 10**).

July 28, 2010 – D.G. sent an email to the Member stating that as far as she was concerned the Member could continue to act for G.S.

July 30, 2010 - D.G. sent an email to the Member demanding that he recuse himself as E Corp.'s Corporate Counsel.

July 30, 2010 – the Member sent a letter to Bank A requesting that E Corp.'s bank account be frozen.

August 3 2010 – Ms. Reid filed a Statement of Claim against E Corp. on behalf of G.S. and M Corp. (Statement of Claim). (The disbursement for the filing of the Statement of Claim naming his client E Corp. as a Defendant was charged on the Member's pre-bill to E Corp., the Defendant, rather than to his client M Corp., the Plaintiff). (**Exhibit 19** disbursements).

August 17, 2010 –Mr. Scott complained against the Member to the LSA.

G. EVIDENCE

8. At all material times, the Member represented E Corp., which was incorporated on **June 1, 2009** and was wholly-owned by three shareholders who were also each directors: L.G.,

Director and President; G.S., Director; and D.G., Director and V.P. Operations. E Corp. retained the law firm Scott Hall LLP as its registered office. The Member was, at all material times, corporate counsel for E Corp.

9. G.S. and the Member had been friends for many years. G.S. introduced the Member to L.G. and D.G. when the three of them planned to form a company. L.G. and D.G. were agreeable to the Member acting as their counsel.

10. The Member and his firm represented E Corp. and the directors in an action filed against C Corp. on **January 7, 2010,** which was settled during the first week in **July 2010**. The settlement funds in the amount of $15,000 were placed into the Member's trust account at Scott Hall LLP.

11. The allegation against the Member arises from his alleged conflict of interest when he continued to act following the concern raised by L.G. and D.G. that they suspected G.S. of misappropriation of company funds. M Corp. was at all material times, a company owned solely by G.S.

12. The Member denied throughout the Hearing that he was in a conflict of interest.

H. ACTION AGAINST C CORP.

13. Prior to the matters in question in this matter, the Member sued C Corp. on behalf of E Corp. An issue arose at the hearing regarding the Member's involvement in the C Corp. matter.

14. On **September 9-10, 2013**, the Member testified that he was only "marginally" aware of the lawsuit against C Corp. despite the fact that he drafted the directors' resolutions approving the settlement agreement, a task that would likely have required at least some awareness of the details of the dispute. In his email of **July 27, 2010** (**Exhibit 6 tab 2**) to the directors of E Corp., the Member stated, "I have done up a resolution authorizing the entering into and execution of the Settlement Agreement. Please sign and return." The Member stated that there was no indication in the billing that he had any time recorded on the C Corp. file. However, it was noted that on **July 27, 2010**, he worked on that file **(Exhibit 19)**.

15. Later in his evidence, the Member again testified that he had nothing to do with C Corp. However, he did agree that he "might have sent something out to facilitate it" (i.e. the directors' resolutions). The Member then testified that he "may have had a hand in drafting" the settlement offer. Later in his testimony, the Member agreed that he may have had a hand in drafting the directors' resolutions approving the settlement offer.

16. L.G. does not suggest that the Member was the only lawyer in charge of the C Corp. file. He testified that: "The Canadian C Corp. matter was handled by Nick Peters as well as the Member, and D.D. provided certain support at different times." With regards to the billing on C Corp., L.G. stated: "According to the billings, it looked like both were listed on the account. Yeah. It has the lawyer responsible, Nicholas Peters; lawyer originating, the Member."

17. In relation to the Member's email of **July 27, 2010** to L.G. (**Exhibit 6 Tab 2**), regarding the C Corp. directors' resolutions, L.G. states: "When he says "I", I assume that's the Member who's drafting the resolutions of the directors. That means he's directly involved in the C Corp. issue." L.G. testified that the resolutions would have been signed and returned to the Member. However, he also agreed that, "In terms of the settlement of the case and, indeed, the preparation of the settlement agreement which you've also sent along that could have been Mr. Peters of Scott Hall LLP."

Summary

18. Mr. Cormie was involved in C Corp. to some extent, and surely more than he initially suggested.

Demand Letter from the Member to E Corp. *et al*

19. L.G. testified that the Demand Letter dated **July 12, 2010**, "was basically a demand letter." It is L.G.'s view that the Member was representing G.S. and trying to recover from E Corp. L.G. testified that, "our corporate counsel was now representing G.S. as an individual with his own company in an issue versus the company that he was supposed to be representing." And further testified, "That kind of started the, what I see as a – and delineated in our letter – as a pretty clear conflict of interest, trying to represent both sides in a – legal battle." Upon being asked whether he saw the Member as a mediator, L.G. stated, "Not at all. I saw no reason for the Member to be involved at all, and certainly the letter itself was clearly not a – an invitation to sit down with an olive branch and reach an agreement. It was more of a demand letter for $45,000 and very short, to the point, but it's also, you know, it's pretty clear that he wasn't acting in the best interests of the company."

20. Ms. Reid testified, "I was not involved with the file at the time the demand letter was written."

21. Notwithstanding the fact that the Member acknowledges in his **January 28, 2011** letter to the LSA (Second Letter) that he was "in error to write the letter [he] did on behalf of M Corp. to E Corp. (**Exhibit 8**), which [he] regret and for which [he] apologize", the Member would not admit during the course of his **September 2013** testimony that sending the Demand Letter was a conflict of interest, nor that the Demand Letter was a demand letter *per se*. His evidence is that:

    (a) The Demand Letter, was not a demand letter and that it was merely meant to be an internal record to the directors of E Corp. informing them that they owed money to M Corp.;

    (b) The Demand Letter was not intended to be confrontational; it was "supposed to be a position";

    (c) Sending the Demand Letter was not a conflict of interest because all he did was "put the parties on notice as to what one party expects the other party to pay and what it's – what E Corp. is responsible to M Corp. for payment of";

(d) The Member then admitted that sending the Demand Letter was "ill advised"; however, he went on to testify that "in acting for E Corp. I acted without conflict of interest and in the best interests of E Corp., with the exception of one letter written on behalf of M Corp."; and,

(e) He would not admit that the Demand Letter was the letter that he was referring to in his Second Letter to the LSA in which he stated that he "regrets" sending the letter on behalf of M Corp. In response to a question of whether the Demand Letter was the letter that he was referring to in his Second Letter, the Member stated, "I don't think so because this is the letter that I firmly believe is what I described earlier on as simply putting forward a position as between the shareholders of what's owing".

22. The Member continued to be evasive in his responses to questions about the Demand Letter. However, he eventually admitted that he may have been referring to the Demand Letter in his Second Letter to the Law Society. He stated, "I do not consider that to be a disrespectful letter with regards to the interests of E Corp. It may have been the one that I referred to in my letter to the LSA, but I've already tried to explain my position on this particular letter".

23. During his testimony in **January 2014**, the Member finally agreed that the Demand Letter was a demand letter.

Summary

24. It is clear from the evidence that the Demand Letter was a demand letter and that the Member was initially untruthful regarding his characterization of the same. It is also clear that the Demand Letter placed the Member in a conflict (L.G. raised this with him in his email of **July 19, 2010**) despite his assertions to the contrary.

Statement of Claim Against E Corp.

25. The Member was extremely evasive when he responded to questions about the Statement of Claim against E Corp. He testified that, "Other than the parties, I have no recollection of the facts set out in the statement of claim".

26. The Member's evasiveness continued. When he was asked if he had anything to do with the Statement of Claim being taken to the courthouse to be issued, the Member responded, "I didn't draft it" and he assumed that it was Ms. Reid who did. He was asked, "But did she do any of this with your instructions?" The Member replied, "I don't remember, but it would be consistent. I'll give you that."

27. The Member testified again that he did not have anything to do with the claim against E Corp. The Member also testified that he does not recall the meetings referenced by Ms. Reid in her notes on the M Corp. file (**Exhibit 21, pg 8)**. Later in the hearing, the Member finally agreed that he made arrangements or had discussions with Ms. Reid in the latter part of **July 2010** with respect to issuing the Statement of Claim against E Corp. The Member testified he could only recall that his involvement with it was "absolutely

minimal" after Ms. Reid "started the Statement of Claim". According to the Member's evidence, Ms. Reid dealt with G.S. and he had "very little to do with it".

28. Contrary to his evidence, the notes on the M Corp. file indicate that Ms. Reid had several discussions with the Member. Including the following:

    (a) **7/19/10** – The Member – "memo to Ashley Reid on action against E Corp.";

    (b) **7/20/10** – Ms. Reid - "Discussion with G Cormie regarding filing Statement of Claim and parties; Confirming details of claim with G. Cormie";

    (c) **8/4/10** – Ms. Reid – "Drafting and revising Statement of Claim; Discussion with G. Cormie regarding claim"; and,

    (d) **8/23/10** – Ms. Reid – Reviewing Statement of Claim; Reviewing Statement of Defence and Counterclaim; Sending email to G.S.; Discussions with G. Cormie regarding file" (**Exhibit 21, pg 8**).

29. Ms. Reid recalls drafting the Statement of Claim; however, she does not recall the circumstances around the file in great detail.

30. Ms. Reid received work from the Member. She testified that: "When I did do work for the Member: which was on a few occasions, generally the way it worked is, if I wasn't at my desk, there would be a post-it note saying, come see me when you have a minute, and then G.S. would sort of ask me to do piecemeal work and then I would sort of do whatever he asked me to do, whether it be draft a statement of claim or…". Ms. Reid went on to state, "it was his client and I did small work for him."

31. Ms. Reid also testified that as to her standard practice when she received work from the Member: "In general, when I worked on the Member's files, he would be responsible for communicating with the client. I would sometimes sit in on phone calls, but he was normally there"; "the Member would speak to the client and then give me instructions on how to proceed or I would sit in on the conference call. Any steps that I took on files for him, I always went to him first, particularly because he tended to have close relationships with his clients, they'd been his clients for a long time, and that was just sort of how the files were run."

32. On billing the Member's files, Ms. Reid testified that: "billing when I worked on the Member's files was done by him and his clients were particular on what they were billed for and what they weren't billed for, so I know that he always reviewed the bills and signed off on them."

I. CONFLICT

33. When Ms. Reid was asked if she checked the conflicts on the file she testified that, "No. Not on this file because it wasn't – I wasn't opening the file, it wasn't my file. I was just assisting on it."

34. Ms. Reid explained her time entries on the M Corp. files stating that: "when I say, "Reviewing file materials; drafting Statement of Claim," it's my recollection that I reviewed this – these three – four pages of spreadsheets and got some of the information from the Member about the issue in the claim. After reviewing these – this- these entries, I do recall – if you see on **July 20, 2010**, I see I wrote, "Discussion with G. Cormie regarding filing Statement of Claim and parties" I do recall having a very informal discussion with the Member about the parties in the litigation. And I do recall that at this time there was some discussion about how G.S. was a very good friend of the Member, and that the Member had been G.S.'s counsel for quite some time. And I do recall that there was – and I don't know why this came up, but there was a potential – I saw a potential conflict in suing D Corp. and E Corp. and H Corp. I recall that I spoke to him about suing those parties because something in the file – and I believe it was the Member's name appearing on page 2 of these – on his spreadsheet came to light, and I asked him, you know, is it okay that we're suing these parties? And I remember being satisfied, and Cormie emphasized that the parties always knew that he was G.S.'s lawyer and that everyone was okay with him continuing to act for G.S. It's a very vague recollection. I recall that it happened in the hallway. It wasn't formal, and it was just sort of in passing, and I remember being told it was okay and to proceed."

J. OVERSIGHT OF FILE

35. On the matter of the Member's oversight on his files, Ms. Reid testified that, "I know that standard practice on these files is that I was always in touch with the Member, giving him updates as to – to what was going on. Like I said in my earlier evidence, the Member's clients were often his friends, and so it was – there was just a – as a junior working on files with him, I was always very cognizant of that because I didn't want to disrupt the relationship that he had or any standard practices that he had with his clients. So I was always very careful to keep him apprised of what was going on."

36. Regarding the progression of M Corp.'s claim against E Corp., Ms. Reid testified: "I recall that we were served with a Statement of Defence and a Counterclaim, I remember sending – or I don't remember independently, but I see here that I sent it to G.S., and I discussed the file with the Member."

37. Eventually Scott Hall LLP withdrew their representation of M Corp. relating to the litigation against E Corp. Ms. Reid, who drafted the Notice of Ceasing to Act, stated: "I don't recall why or what the impetus was for the drafting and filing of the Notice of Ceasing to Act. I don't recall. I see that I discussed it with the Member. I don't recall how that came about." Ms. Reid states with regard to the Notice of Ceasing to Act: "I think in the end we ended up serving **[the Notice of Ceasing to Act]** by email as well, although I had suggested to the Member that we should have tried to serve it by registered mail. But G.S. didn't pick up registered mail because he travelled a lot. So that's where the file was left."

38. Ms. Reid was involved in drafting the M Corp. Statement of Defence and Counterclaim, although she does not remember doing so. However she agrees that her work would have been reviewed.

39. G.S. testified that he had communications with the Member in relation to the preparation of the Statement of Claim, but he does not remember Ms. Reid. This indicates, in addition to the other evidence, that the Member had more involvement in preparing the Statement of Claim than he suggests.

Letter to the LSA October 25, 2010 (Exhibit 7)

40. The Member testified that, "By the time the Statement of Claim was undertaken and filed and delivered, it was clear that Scott Hall LLP no longer represented the interests of E Corp." This is not true. The Member's time entry indicates that he prepared a memo to Ms. Reid in relation to the "action against E Corp." on **July 19, 2010**, and Ms. Reid began drafting the Statement of Claim on **July 20, 2010**. Therefore, despite the Member's evidence, he was clearly involved in preparing the Statement of Claim before D.G. told him in her **July 30, 2010** email to "recuse himself".

Summary

41. It is clear from the evidence that the Member was directly involved in the preparation of the Statement of Claim and in the M Corp. lawsuit in general (i.e., the lawsuit against E Corp.). In addition, the Member was clearly in a conflict of interest on **July 19, 2010**, when he first instructed Ms. Reid to begin drafting the Statement of Claim. Therefore, the Member's attempts in his evidence to deny these facts are falsehoods.

Bank A Letter/Corporate Registry Information

42. On **July 30, 2010**, the Member wrote to Bank A, informing the bank that the Member acted as Corporate Counsel for E Corp. **(Exhibit 17)**. The Member instructed the bank to freeze E Corp.'s account, based on a conflict between the company's Directors and Shareholders.

43. On **August 5, 2010**, G.E., of Bank A, sent a letter to D.G. informing her of the Member's request to have E Corp.'s business accounts frozen **(Exhibit 6, Tab 8)**. In that letter, G.E. informed D.G. that he would not freeze any of E Corp.'s business accounts until he had received written and signed confirmation to do so, from at least one of E Corp.'s directors. G.E. also communicated the Member's request to L.G.; both L.G. and D.G. informed G.E. to ignore the Member's instructions **(Exhibit 16)**.

44. The Member testified that he did not know that G.S. was no longer a director of E Corp. in **July of 2010**. The Member went on to testify that while he was taking directions from G.S. (in **July**) he "absolutely" thought that he was taking directions from a director of E Corp.

45. The Member testified that when he wrote the letter of **July 30, 2010** to Bank A he acted for G.S. and he believed G.S. to be one of the E Corp. Board Members.

46. The Member testified that he would have found out that Scott Hall LLP was no longer the registered office of E Corp. when D.G. sent her email on **July 30, 2010**, telling him to "recuse yourself". The Member testified that to find out that there had been a change of

registered office or that G.S. was no longer a director a corporate registry search would have needed to be done. The Member stated that he was not sufficiently concerned at that time to feel that a search was needed and he does not recall performing a corporate registry search. However, as noted by the Member, the E Corp. disbursements show that corporate registry searches were performed on **July 19, 2010** and **July, 22, 2010** (It is not clear, however, if the searches were performed on E Corp. or another company) (**Exhibit 19**).

47. The Member testified that his instructions from G.S. were to ensure that moneys were not paid out because "L.G., who had already taken the – he had taken the act of filing a change of directors with the corporate registry so that he and Debbie became the only directors of the corporation by this time." This goes against his earlier statement that, at the time he wrote the letter to Bank A, he did not know that G.S. was no longer a director of E Corp.

48. The Member then further contradicted his earlier evidence by stating that he "believes" that he knew at the time he wrote the letter to Bank A that G.S. had been removed as a director.

Conflict of Interest Generally

49. At the end of the **September 10, 2013** hearing, the Member summarized his evidence regarding conflicts as follows: "I have thought about it obviously a lot and, you know, in the various areas that we've gone through today and yesterday, I think – I do not think I was in a conflict of interest in the writing of the letters to the directors of E Corp. or to Bank A. And with regards to the statement of claim, and the little bit I had to do with it, the firm of Scott Hall no longer acted for E Corp. when Ashley Reid commenced her action on behalf of Scott Hall LLP."

50. L.G. was asked his view on the Member acting for G.S. in relation to the settlement negotiations between the E Corp. directors in **July 2010** and his response was as follows: "I had, I think, been pretty clear on several occasions that, at the point in time that he formally recused himself as our corporate counsel and handed over all the minute books, et cetera, that if he chose to represent G.S. personally, that there was little I could do to stop that…I know that Scott Hall was well aware of the fact that you could not and should not represent both parties in any legal dispute."

51. In regards to D.G.'s email to the Member on **July 27, 2010** indicating that she had no problem with him representing G.S., D.G. testified that she "didn't know what a conflict of interest was" at that time. It was clear to the Hearing Committee throughout D.G.'s testimony that she was an unsophisticated client; she was focused on carrying out the work of E Corp. and was naive in her knowledge of solicitor/client relations and corporations in general.

Summary

52. The Member's evidence regarding his knowledge of G.S.'s standing as a director of E Corp. at the time that he wrote the letter of **July 30, 2013** to Bank A is inconsistent and

contradictory. Additionally, it is clear that the Member had given instructions to commence the drafting of the Statement of Claim well before sending the aforementioned letter to Bank A; therefore, he was in a clear conflict situation at that time, despite his assertions otherwise.

Accounting re the E Corp. Matter

53. With regard to his **July 28, 2010** letter to E Corp. (**Exhibit 6 tab 10**) the Member testified: "I don't believe there's been an account. All that we have here are the pre-bills. Right?" Panel Member, Mr. Code noted that the **July 28, 2010** letter contains 4 accounts, "and pays them and remits the remainder of a trust account". Mr. Code further noted that to say "we haven't seen any accounts is surely wrong". On further questioning, the Member agreed that the accounts included in his **July 28, 2010** letter were pre-bills intended to form the bill at a later date. However, despite that fact that E Corp. was not billed pursuant to the **July 28, 2010** letter, funds were transferred from trust i.e., on **July 28, 2010**, $3,139.58 was removed from the E Corp. trust account creating a negative balance in the account of $3,195.26 (**Exhibit 19**).

54. Regarding her time entries, Ms. Reid testified that, "My time would have been allocated to the file number that the Member asked me to put my time to."

Summary

55. Based on the totality of the evidence, the Member's failure to admit that he was in conflict during July and the early part of **August 2010** was an attempt to mislead the Hearing Panel. It is difficult to see how the Member can honestly say that he was not acting in a conflict of interest, particularly in the period after he directed Ms. Reid to draft the Statement of Claim against E Corp.

K. LAW SOCIETY RULES - CHAPTER 6 - CONFLICTS OF INTEREST

In each matter, a lawyer's judgment and fidelity to the client's interests must be free from compromising influences.

RULES

1. A lawyer must not represent opposing parties to a dispute.

2. A lawyer must not act for more than one party in a conflict or potential conflict situation unless all such parties consent and it is in the best interests of the parties that the lawyer so act.

3. (a) Except with the consent of the client, a lawyer must not represent a person whose interests are directly adverse to the immediate interests of a current client.

   (b) Except with the consent of the client or approval of a court pursuant to (c), a lawyer must not act against a former client if the lawyer has confidential

information that could be used to the former client's disadvantage in the new representation.

(c) With the approval of a court, a lawyer may act personally against a former client where another lawyer in the firm has confidential information that could be used to the former client's disadvantage in the new representation.

L. DECISION

56. The Member was clearly acting against the best interests of his client, E Corp., when he wrote the **July 30, 2013** letter to Bank A. The letter was marked "**URGENT**" (**Exhibit 17**). In the letter he advises banking personnel of the assertion that certain monies have been misappropriated and it is the Member's belief that this must be resolved before the company can recommence operating as usual. He requests that Bank A 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. Counsel for the Member advised the Committee that there was no evidence before us of the ramifications of freezing a bank account. However, it is the view of the Hearing Committee that we are entitled to rely on common sense and common knowledge of the ramifications of what occurs when assets have been frozen. Had the bank employee, G.E. not acted proactively and merely followed the instructions of the Member, E Corp. would have found itself in jeopardy; as an example, cheques paid to creditors would not have been honoured, negatively affecting the reputation of E Corp.

57. Much questioning was required prior to the Member acknowledging that the letter of **July 12, 2010,** sent by the Member to E Corp., was a demand letter. The Member commenced his evidence by stating that it was not a demand letter but at the end of questioning he acknowledged that it was a demand letter. It is concerning to the Hearing Committee that the Member was less than truthful in his letters of **October 25, 2010** and **January 28, 2011** to the LSA and his ongoing assertions that he was not in a conflict of interest, that the letter he sent was not a demand letter, and that he had little to nothing to do with instructing on the preparation and issuance of the Statement of Claim against E Corp. Contrary to the Member's evidence, the contemporaneous documentary evidence and the evidence of Ms. Reid, which supplemented the contemporaneous documentation, clearly shows that the Member was very involved not only in the decision to issue a statement of claim against E Corp. but also in personally instructing Ms. Reid to prepare and issue the Statement of Claim. In addition, when Ms. Reid questioned the Member on whether they might be in a conflict if they issued a statement of claim against E Corp., the Member advised her they were not in a conflict.

58. The evidence is clear and it is the finding of this Hearing Committee that the Member did not act in the best interest of his clients, E Corp. and its directors. The Member was in a conflict of interest when he chose to represent one of the directors, G.S., against E Corp. and by extension its two remaining directors, L.G. and D.G. The Member perpetuated this conflict by issuing the Demand Letter to E Corp., the letter to Bank A instructing the bank to freeze E Corp.'s accounts, and instructing Ms. Reid to prepare and file a

statement of claim against E Corp. Objectively, the Member was in breach of the LSA's Code of Conduct and did not, by engaging in these actions, act in the best interests of his clients. The Code is clear that a lawyer cannot act against a client. Given the evidence, there is no reason to excuse or believe that the Member's actions could not and did not hurt the interests of his clients.

59. Contrary to his evidence, **Exhibit 6 Tab 3** clearly shows that the Member prepared the resolution authorizing the entering into and execution of the settlement agreement between E Corp. and C Corp. in **July 2010**.

60. In his letter of **July 27, 2010** to L.G., D.G. and G.S. he states:

> "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."

61. The Member then goes on in the letter to report that he received a response from G.S. to L.G.'s offer, in that G.S. will accept $40,000 in full and complete satisfaction of all claims he may or may have had against E Corp., he will resign his positions in the Corporation, transfer his shares as directed and enter into a settlement release and indemnification agreement satisfactory to all parties. G.S.'s offer, the Member notes is open for acceptance by L.G. and D.G. until 5:00 p.m. on Thursday, **July 29, 2010** (**Exhibit 6 Tab 5**). The following day, D.G. advised the Member that she had no problem with him representing G.S. in this matter and that L.G. would be representing his and her interests. L.G. testified that the following email sent by D.G. on **July 28, 2010**, L.G. spoke with her explaining that when the Member sent the letter stating he represented M Corp. and G.S. while still also acting as E Corp.'s corporate counsel he had "already crossed the line" into a conflict of interest, breach of the Code of Ethics, something that "cannot be resolved by asking for permission, or forgiveness" (**Exhibit 6 Tab A**).

62. The Member is expected to have realized before he took any steps against anyone of his clients that to do so would be a conflict of interest. When he wrote the letter of **July 12, 2010** to L.G. and D.G. stating that, "We act on behalf of M Corp., which is a company owned by G.S.," that he had crossed the line into a conflict of interest situation. He continued down this path in the face of L.G.'s articulated concern set out in D.G.'s email of **July 30, 2010** wherein she states, "One thing that Larry and I should have made more clear in our previous messages, is that in the event you decide to continue to support G.S. in matters vs. E Corp., that you are representing him personally and that E Corp. has not authorized, nor will pay for any and all related services from you". D.G. goes on to state, "I would also have to insist that you recuse yourself as E Corp.'s corporate counsel…". Regardless of these communications, the Member proceeded with his demand to Bank A for the assets of E Corp. be frozen and the issuance of the statement of claim against E Corp.

63. It is concerning to the Hearing Committee that the Member was less than forthcoming in his responses to the complaint to the LSA contained in his letters of **October 25, 2010** and **January 28, 2011** (**Exhibit 7 and 8**). In his letter of **October 25, 2010**, the Member advises the LSA that he recognized in **July 2010** that there was a serious conflict between the shareholders of E Corp. He reported that he saw his role as one to try and resolve the matter as an intermediary. He further states that this was, "Obviously unacceptable and by receipt of D.G.'s email of **July 28, 2010**, and the fact that the registered office was changed on **July 20, 2010** and following receipt of L.G.'s letter of **August 3, 2010**, it was obvious that I no longer acted or represented E Corp. as its corporate counsel. The letter sent to Bank A on **July 30, 2010** was the last act that I believe I took as corporate counsel for E Corp.". This is not accurate. The Member instructed Mrs. Reid to prepare and file a statement of claim, which was filed on **August 3, 2010**. Regardless it was inappropriate, when a conflict arose, for the Member to act for any of the parties. The expectation of the LSA is that he would have advised the clients in writing that he could not act for any of them in this dispute without clear written instructions to do so and only after he had advised the parties to seek independent legal advice. Instead, the Member disregarded his duty and acted on behalf of G.S. and M Corp. against E Corp. and L.G. and D.G.

64. It is very concerning to the Hearing Committee that in his letter of **July 28, 2011** to the LSA that he stated that while he understood there was a dispute between the shareholders, this did not affect his role in acting as a registered office of E Corp. and believed that throughout the period there was no conflict of interest. He admitted that while acting on behalf of both E Corp. and M Corp. he was in "error to write the letter" he did on behalf of M Corp. addressed to E Corp. which he regrets and for which he apologizes. He goes on to advise his Regulator in his **July 28, 2011** letter that, "In acting for E Corp. [I] acted without conflict of interest and in the best interest of E Corp. with the exception of one letter written on behalf of M Corp.". This is not true. He did not only write one letter on behalf of M Corp. He wrote to Bank A instructing that the accounts of E Corp. be frozen and instructed Ms. Reid that a statement of claim was to be filed against E Corp. In doing so, he was acting against the interests of E Corp. and L.G. and D.G.

65. The Statement of Claim filed on the instructions of the Member, on behalf of G.S. and M Corp. was filed on **August 3, 2010**.

66. The time entries on the M Corp. file clearly demonstrate that the Member was intimately involved in pursuing the interests of M Corp. and G.S. against his clients, E Corp. and L.G. and D.G. On **July 12, 2010**, the time entry shows the following:

    (i) **July 12, 2010** – Demand on E Corp.;

    (ii) **July 15, 2010** – Preparation for action against E Corp. for monies owed;

    (iii) **July 16, 2010** – Telephone call from G.S. and consultation with Ms. Reid;

    (iv) **July 18, 2010** – Meeting with G.S. re review action against E Corp.;

(v) **July 19, 2010** – Memo to Ms. Reid on action against E Corp.;

(vi) **July 20, 2010** – Ms. Reid's entry shows drafting statement of claim, reviewing details of the claim with the Member, discussions with the Member regarding filing the statement of claim and parties and confirming details of the claim with Mr. Cormie;

(vii) **August 4, 2010** – Ms. Reid's entry shows she had discussions regarding the claim with G.S. and discussions with the Member regarding the claim;

(viii) **August 11, 2010** – Ms. Reid's entry shows she gave directions to the process server regarding the statement of claim;

(ix) **August 23, 2010** – Ms. Reid's entry shows that she discussed the file with the Member as well as reviewing the statement of claim and reviewing the statement of defence and counterclaim; and,

(x) **August 27, 2010** – Ms. Reid's entry shows she discussed the file and statements of defence with the Member.

The above clearly show the Member was intimately involved in the action against E Corp. on behalf of M Corp. and G.S.

67. The Hearing Committee has carefully assessed the credibility of the witnesses appearing before it. Where there is a conflict in evidence between the Member and the other witnesses testifying, the Hearing Committee accepts the evidence of the other witnesses. In addition, the evidence of the witnesses was largely corroborated by the contemporaneous documentation entered as exhibits in this Hearing. This Hearing Committee assessed the credibility of each witness (L.G., D.G., G.S., G.E. and Ms. Reid); with regard to all the relevant evidence before it, the Hearing Committee believes the evidence of these witnesses and believes that such evidence was consistent with the preponderance of the probabilities, which a practical and informed person would recognize as reasonable, given the factual circumstances and the issues before the Hearing Committee. As stated in the Hearing Guide, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions and the Hearing Committee finds it to be so here.

Faryna v Chorny, [1951] BCJ No 152, at para 11.

68. Given the totality of the evidence, it is the finding of the Hearing Committee that the Member was in a conflict of interest; the Citation is proven and his conduct is deserving of sanction.

69. It is also the finding of this Hearing Committee that the Member was less than forthcoming with the LSA and in his evidence before the Hearing Committee. It is the responsibility of a member of the LSA to be absolutely truthful in responding to his

Regulator; to be less than truthful and forthcoming brings into question the governability of the Member.

M. DECISION REGARDING SANCTION

70. Argument was heard from LSA Counsel and Counsel for the Member on sanction.

71. LSA Counsel argued that the Member's prior record is of serious cause for concern as they both involved significant suspensions. It is the LSA's position that a very significant suspension of one year would be reasonable considering the Member's past transgressions. Counsel for the Member's position suggested that a fine would be an appropriate sanction considering the circumstances did not result in an obvious "bright line". In the alternative, should there be consideration of a suspension, the Member's counsel argued that suspension should be a short one.

72. The LSA did not argue for disbarment, something that may well have been available on these facts, because LSA Counsel gave notice to the Member prior to hearing only that the LSA was seeking suspension. Having decided not to give pre-hearing notice that disbarment was a possibility, the LSA could not, and did not, seek disbarment.

73. In support of the LSA's position that the Member ought to be suspended, Counsel offered two earlier Hearing Committee Reports involving the Member (**Exhibits 26 and 27**). On **February 14**, **15** and **16, 2005**, a Hearing Committee of the LSA adjudicated on four Citations against the Member. The allegations were that (1) the Member was involved in discussions to convince certain individuals to write a cheque on a Bank account when the Member knew or ought to have known that such individuals did not have the lawful right or authority to do so; (2) the Member made false representations to a Bank; (3) the Member knowingly participated in the deposit of cheques to the account of a client when the Member knew or ought to have known they had no right to negotiate the same and were not entitled to the monies; and, (4) the Member failed to be candid and complete in his response of **May 9, 2003** to the LSA when he asserted that he had not been cross-examined on his Affidavit and no transcripts existed.

74. The Hearing Committee in the **February 2005** Hearing found Citation (1) was proven, stating that the Member "suggesting an indemnity to induce the reluctant employees to participate in this improper conduct is conduct unbecoming a Barrister and Solicitor of the Law Society and misconduct deserving of sanction." The Hearing Committee found that Citation (3) was proven and established conduct deserving of sanction in that the Member "ought to have known that the cheques were ones which could not properly be deposited to an account controlled" by another. The Member was found to have been at least wilfully blind with respect to the cheques. The Hearing Committee found that while the Member showed a degree of carelessness in relation to the allegations set out in Citation (4), the Hearing Committee did not find that his inattention rose to the level of conduct deserving of sanction, but did note that he showed a degree of carelessness toward the LSA's request.

75. Of note, the Hearing Committee in the **February 2005** Hearing noted that Mr. Cormie showed "no remorse for his part in the matter set out in Citation (3). Given the Hearing Committee's findings, Mr. Cormie was suspended for three months commencing **March 24, 2005**. In concluding, the Hearing Committee stated, "It should also make it clear to [the Member] that when confronted with allegations of impropriety he should respond with care and candor and not evasion and pleas of forgetfulness."

76. On **October 11, 2005**, a Hearing Committee adjudicated on four Citations facing the Member **(Exhibit 26)**. The Citations alleged that the Member was in a conflict and failed to disclose the conflict and therefore breached the Code of Professional Conduct. Citation (2) alleged that the Member misled or attempted to mislead another lawyer and thereby breached the Code of Professional Conduct. Citation (3) alleged that the Member failed to respond in a complete and appropriate manner to the LSA and therefore breached the Code of Professional Conduct. Citation (4) alleged that the Member failed to correct the misapprehension on the part of another lawyer, and therefore breached the Code of Professional Conduct. The Member was reported to the LSA by a fellow member of the firm at which he practiced.

77. The Hearing Committee in **October 2005,** found that the Member failed to be complete and accurate in his response to the LSA about his knowledge in relation to certain matters. It was the finding of the Hearing Committee that the conduct of the Member was deserving of sanction in respect to the four Citations. The Hearing Committee noted, as a result of unrelated matters, (the earlier 2005 Hearing) **(Exhibit 27)**, that the Member had served a previous three month suspension between **March 24, 2005** and **June 24, 2005**. Given that the matters set out in **Exhibit 26** were pending before the LSA, such effectively prevented the Member from applying for reinstatement upon the expiry of that first suspension. The Hearing Committee in **October 2005** ordered that the Member stand suspended for a period of four months; that the suspension have a commencement date of **June 24, 2005** and that the balance of the suspension commence on **October 11, 2005** and continue until **October 24, 2005.**

78. Given the findings of the Hearing Committees in the **February** and **October 2005**, as well as the evidence before this Hearing Committee, it is the finding of this Hearing Committee that the Member clearly has difficulty with being forthright not only in his evidence, but also in his responses to the LSA. This Hearing Committee can only conclude given the two prior suspensions imposed upon the Member and from the matters before this Hearing Committee, that the Member does not demonstrate the ability to learn from his mistakes and his governability is seriously brought into question. This Hearing Committee has grave concerns that the Member's behaviour will recur, specifically in the area of a conflict of interest and the lack of a full and free disclosure to his clients and to the LSA. As stated elsewhere in this decision, the Member's lack of remorse and refusal, at the onset, to acknowledge any wrongdoing in the matters before us, further supports the findings of this Hearing Committee that the Member is reaching a level of ungovernability.

79. The Member shall be suspended for one year commencing two weeks from the last day of this Hearing being **April 22, 2014**. In ordering the sanction of a one year suspension,

the Hearing Committee considered the arguments of Counsel, prior Hearings against the Member, the law, and the guidance offered in the Hearing Guide.

80. In considering sanction, the Hearing Committee seriously considered disbarment. As Counsel did not give notice to the Member that disbarment was a possibility, the Hearing Committee did not feel that disbarment was an available sanction and therefore decided to suspend the Member, rather than to disbar him.

81. In ordering a one-year suspension, the special circumstances considered by the Hearing Committee in this matter include the following:

    (a) the Member's prior discipline record;

    (b) the high risk of recurrence; and

    (c) the Member's lack of acknowledgement of wrongdoing, refusal to acknowledge wrongdoing, lack of credibility, and lack of remorse.

N. COSTS

82. Counsel for the LSA offered an Estimated Statement of Costs (the Cost Estimate) which is to be finalized at a later date and paid by the Member prior to any application for reinstatement.

O. CONCLUDING MATTERS

83. The Exhibits in these proceedings shall be available to the public with redaction of client names to protect solicitor-client privilege.

84. There shall be a Notice to the Profession.

85. There shall be no referral to the Attorney General.

86. There shall be a referral to the Practice Review Committee to satisfy any conditions which may be imposed upon the Member. The conditions include successful completion of an ethics course. This shall be completed prior to any eventual application for reinstatement.

DATED this 2 day of June, 2014.

ROSE M. CARTER, QC
Chair

BRETT CODE, QC
Member

AMAL UMAR
Member