THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING

DAVID TORSKE,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

W .E. Brett Code, Q.C., Chair (Bencher)
Anthony G. Young, Q.C., Committee Member (Bencher)
Glen Buick, Committee Member (Lay Bencher)

Appearances:

Counsel for the Law Society – Sharon Borgland
Counsel for David Torske - J.M. Lutz

Hearing Dates:

February 23, 24, 25, 26, 27 and July 8, 2015

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Summary of Decision

1. Mr. Torske developed an addiction to painkillers. He injured his knee, sought treatment, and was legally prescribed potentially addictive opioid painkillers. During the 14-month wait for orthopaedic surgery and through no fault of his own, he developed what came to be diagnosed, and was described before us by the experts, as Substance Dependence disorder. After the surgery, Mr. Torske's pain continued to be controlled with legally prescribed opioids. Aware of the addiction, Mr. Torske sought his doctor's advice, and was abruptly tapered off his opioid medication over a one-week period. That abrupt withdrawal heightened his addictive cravings. Soon after that, he was stabbed and beaten while defending a break-in by two men in his garage. He was again prescribed

opioids for the pain. Shortly afterward, his prescription was again discontinued abruptly. He could not stay away from the painkillers.

2. Craving the opioids to which he had become addicted iatrogenically, and unable to obtain further opioids legally, he made a bad choice, an illegal, criminal choice, consciously: he created a false prescription pad, forged his doctor's signature, and forged 40 to 50 prescriptions and obtained thousands of pills improperly.

3. His doctor found him out, threatened him, and required that he stop forging prescriptions, which he did for a time. He started up again, and was found out again. The second time, his doctor told him that he would be informing the police, which he did in June of 2011.

4. Mr. Torske then called ASSIST, a voluntary and confidential assistance program for lawyers, to seek help for his addiction issues.

5. His employer, the Crown, filed a complaint with the Law Society in July of 2011. The Law Society and the police were investigating simultaneously. Criminal charges were laid in April of 2012. Mr. Torske was convicted on one count of uttering a forged document and given a conditional discharge with one year of probation. The Crown appealed and, on April 16, 2013, the Court of Appeal granted the appeal and substituted a 9-month conditional sentence for the conditional discharge.

6. Mr. Torske was suspended by letter dated June 5, 2013, with the suspension being made retroactive to April 16, 2013. He continues to be suspended.

7. On April 11, 2014, a Committee of Benchers heard an application, brought by Mr. Timothy Foster under section 108 of the *Legal Profession Act*, RSA 2000, c. L-8 (hereinafter referred to either as the *Act* or as the *Legal Profession Act*) and agreed, by way of a unanimous Resolution, signed April 21, 2014, that Mr. Torske could work as a paralegal in Mr. Foster's office.

8. Several citations alleged by the Law Society against Mr. Torske then came on for hearing before us. The hearing commenced on February 23, 2015. On that morning, we heard evidence and submissions on the question of guilt. We found Mr. Torske guilty of two citations and not guilty of a third.

9. We then proceeded immediately to the hearing on sanction. We heard lay and expert evidence on February 23, 24, 25, and 26, 2015. The parties closed their cases on February 27, and we heard the arguments of counsel that day. At the end of those oral arguments, we asked for written submissions on several issues. After receiving those written submissions, we decided, on April 20, 2015, that we would like to hear further oral submissions. After some scheduling difficulties, we re-convened on July 8 and heard the final oral submissions of the parties.

10. After full deliberation and full consideration of the evidence and the submissions of counsel on sanction, we decided that Mr. Torske will not be subject to disbarment but that he will instead be suspended for 18 months, commencing July 8, and will pay actual costs.

Citations

11. By Notice to Solicitor dated January 28, 2015, the Law Society of Alberta gave notice to Mr. Torske that it would hold a hearing to determine whether he was guilty of conduct deserving of sanction on three citations. The Law Society alleged that Mr. Torske:

    a) engaged in conduct that brought discredit to the profession and that that conduct was deserving of sanction;

    b) engaged in conduct that impaired his capacity or motivation to provide competent services and that that conduct was deserving of sanction; and

    c) failed to be candid with the Law Society and that that conduct was deserving of sanction.

Mr. Torske's Practice History

12. Mr. Torske was admitted to the Law Society of Alberta on July 4, 1994. He then practiced for a year with a firm in Edmonton followed by three years with the Legal Aid Youth Office in Calgary. From May of 1998 until October of 2010, he practiced as a Crown prosecutor in Calgary. He then joined Foster Iovinelli Beyak Barristers & Solicitors, where he worked as a criminal defence lawyer.

13. Effective April 16, 2013, Mr. Torske's membership in the Law Society was suspended by letter from the Law Society dated June 5, 2013.

14. On April 11, 2014, a Committee of Benchers considered an application by Mr. Timothy Foster to have Mr. Torske work at his firm, the Roadlawyers, as a paralegal. On the basis of an undertaking given by Mr. Foster and pursuant to detailed, strict conditions, the Benchers granted that application on April 21, 2014. The undertaking given by Mr. Foster, dated April 28, 2014, and the extensive conditions of the decision of the Benchers is attached as ***Schedule "1"*** to this written decision (Both Exhibits 24 and 25). Mr. Torske continues to work as a paralegal under this arrangement.

Mr. Torske's Factual Admissions and Admissions of Guilt

15. At the outset of the hearing, we were presented with a document, dated February 23, 2015, entitled, "Agreed Statement of Facts and Exhibits and Admission of Conduct Deserving of Sanction". That document was signed by Mr. Torske. It was entered as

Exhibit 6 and is attached, without the Exhibits referenced in it, to this decision as ***<u>Schedule "2".</u>***

16. According to that document (and in brief, incomplete summary):

a) Mr. Torske injured his knee in June of 2008. While he awaited surgery, he was prescribed a series of addictive pain medications, including Tylenol 3, Percocet, Supedol, and Dilaudid. He became addicted to pain medication.

b) Mr. Torske forged drug prescriptions for various narcotics in 2010 and 2011.

c) On June 3, 2011, Mr. Torske contacted the Law Society- and donor-funded ASSIST programme and sought assistance for his addiction issues.

d) On April 12, 2012, Mr. Torske advised the Law Society that the Calgary Police Service had laid charges, alleging that he was guilty of criminal offences under the following sections of the *Criminal Code,* RSC 1985, c. C-85 (referred to hereafter as the "Criminal Code"):

i. Section 368(1)(a) – uttering a forged document
ii. Section 368(1)(b) – causing another person to utter a forged document
iii. Section 366(1) – forgery
iv. Section 267(a) – assault with a weapon

e) On August 28, 2012, Mr. Torske entered a guilty plea to one count under section 368(1)(a) for uttering a forged document. All other charges were withdrawn.

f) At his sentencing hearing on November 9, 2012, Mr. Torske was given a conditional discharge with one year of probation.

g) The Crown appealed.

h) On May 24, 2013, the Alberta Court of Appeal (2-1) allowed the Crown's appeal, quashed the sentence given in the Provincial Court of Alberta, and substituted a sentence of nine months to be served in the community. No credit was given for the probation already served. The sentence was conditional, requiring, among other things, that Mr. Torske abstain from alcohol, non-prescription drugs or any drugs containing codeine, that he attend counselling and treatment programs, and that he abide by a detailed curfew.

i) Mr. Torske also admitted in June of 2013 that he had been using cocaine on a regular basis from April of 2012 to February 21, 2013.

17. In the same document, Mr. Torske admitted the conduct alleged in Citations 1 and 2, and he admitted that that conduct was deserving of sanction. Mr. Torske made no admission in respect of Citation 3.

Citations 1 and 2

18. With regard to Citations 1 and 2, we accepted Mr. Torske's admissions, and we found him guilty of them.

Citation 3

19. Mr. Torske having made no admission on Citation 3, the burden fell to the Law Society to prove on a balance of probabilities that Mr. Torske was guilty of failing to be candid and, further, if proved, that the proved conduct amounted to conduct deserving of sanction. The facts relied upon by the Law Society for Citation 3 are set out below.

2011

20. On July 7, 2011, Alberta Justice Special Prosecutions advised the Law Society of Alberta of an ongoing Calgary Police Service investigation involving allegations that Mr. Torske was forging prescriptions on a stolen prescription pad to obtain narcotics.

21. On July 14, the Law Society directed an investigation into the allegations. On September 19, the Law Society advised Mr. Torske of its investigation and sought his response. His response came soon afterward, on September 30, 2011.

2012

22. Six months then passed. On April 12, 2012, Mr. Torske advised the Law Society that the Calgary Police Service had laid the above-described charges against him. He advised the Law Society that his legal counsel was Mr. Timothy Foster.

23. Four months then passed. On August 28, Mr. Torske entered a guilty plea to a single count of uttering a forged document. The other charges were withdrawn.

24. Almost three months then passed. On November 21, Mr. Foster advised the Law Society that Mr. Torske had been given a conditional discharge with one year of probation. That sentence had been delivered on November 9, meaning that 12 days had passed before Mr. Torske informed the Law Society of the change.

25. On December 5, 2012, the Crown appealed.

26. At no time did Mr. Torske or his legal counsel advise the Law Society that Mr. Torske's conditional discharge had been appealed by the Crown.

2013

27. Almost four months passed from the time of the sentence to the time of the appeal. On April 16, 2013, the Court of Appeal allowed the Crown's appeal, substituting the conditional sentence with a sentence of nine months to be served in the community (see *R v Torske*, 2013 ABCA 162 – referred to hereafter as "*R v Torske*, CA".

28. At no time did Mr. Torske or his legal counsel report that Mr. Torske's conditional sentence had been quashed by the Court of Appeal and that a sentence equivalent to nine months' imprisonment had been imposed in its stead.

29. Those matters were reported to the Law Society by the Court of Appeal itself but not until some six weeks later. We understand that the decision of the Court of Appeal was delivered orally on April 16 but that it then took the Court until May 24 to finalize and for two of the three judges to sign, the majority and dissenting judgments. [Only one of the two majority justices signed the decision.]

30. On May 31, the Law Society received appeal materials, including the split decision of the Court of Appeal, which had been sent directly from the Court of Appeal.

31. Five days later, On June 5, the Law Society advised Mr. Torske in writing that, pursuant to section 83(7) of the *Legal Profession Act* his membership was automatically suspended, and the suspension was made effective April 16, the date on which the decision to substitute a 9-month sentence was delivered orally by the Court of Appeal.

Analysis and Conclusion

32. The Law Society alleged that Mr. Torske failed to be candid with the Law Society and that he was guilty of conduct deserving of sanction because he failed to inform the Law Society of the appeal and because he failed to inform the Law Society of a change of sentence. In support of its position, the Law Society called no witnesses but relied on the evidence set out in ***Schedule "2"*** as well as the Exhibits referenced there, which Exhibits were before us.

33. The analysis begins with Rule 105 of the Rules of the Law Society of Alberta which requires that a member charged with any of a list of things, including an indictable offence or several other offences, give a written notice to the Executive Director pertaining to the particulars of the charge or investigation within a reasonable time after the charge is laid or the investigation commenced and ***forthwith notify*** the Executive Director of the disposition of the charge or investigation and any agreement arising out of the charge or investigation.

34. Section 83(7) of the Act creates an automatic suspension of the membership of any member who is sentenced to a term of imprisonment. The automatic nature of such a suspension points to the substantive importance of reporting ***forthwith*** from a regulatory point of view, the word "forthwith" being emphasized in Rule 105. Since the result of a

sentence of imprisonment, which was the effect of Mr. Torske's lost appeal, is automatic suspension, the protection of the public requires actual forthwith reporting so that the Law Society has the information needed to implement the suspension, automatically and immediately. If the reporting of such information is not done forthwith, members can carry on practicing, thus creating risk to the public and risk to the standing of the profession, while time passes from the declaration of the sentence, the reporting to the Law Society, and the administrative time needed to implement the suspension. To serve the public interest, the length of time taken to report should be very short. The Act could not be clearer than that the reporting must be forthwith.

35. Here, Mr. Torske's sentence was changed on April 16 when he was given a sentence equivalent to a sentence of imprisonment. His suspension did not take effect until June 5, although the Law Society stated that on June 5 it was retroactive to April 16. Despite that retrospectivity, almost two months had gone by before the Law Society could provide the protection envisioned by section 83(7). Had Mr. Torske complied with the requirement of forthwith reporting, the two-month period during which the public was not protected would have been shortened, to something more like the five days it took for the Law Society to implement the suspension once it did find out about the sentence from the Court of Appeal. For that, the Law Society argues, Mr. Torske should be found guilty of Citation 3.

36. The difficulty for us is that the citation is not breach of Rule 105 in light of section 83(7). Instead, the citation is failure to be candid. We cannot find that Mr. Torske failed to be candid.

37. The Law Society approaches this citation as being one of strict liability, that is, that the member has the duty to report forthwith, and here the member did not, with the consequence that the public was left unprotected for two months while he should have been suspended. For us, failure to be candid connotes a mental element. “Failure” as employed in Citation 3 necessarily includes a mental process; guilt cannot be established by proof only that a deadline has been missed or a particular period of time permitted to pass without the delivery of the requisite report. That means that part of the Law Society's burden of proof is to demonstrate on a balance of probabilities that Mr. Torske intended not to report, was reckless with regard to his non-reporting, was willfully blind with regard to it, or, possibly, was negligent with regard to his reporting obligation. In our view, the Law Society has not succeeded in meeting that burden of proof.

38. Mr. Torske testified that he had legal counsel dealing both with his criminal charges and with the conduct side of the Law Society's investigation and subsequent processes. He also told us that he was under Practice Review with the Law Society throughout the period under consideration.

39. Mr. Torske admits that he did not personally advise of the Notice of Appeal. Mr. Torske knew that his counsel had taken over communication with the Law Society on conduct issues. Mr. Torske did not assert under oath that reporting the appeal had become his counsel's obligation. Nor did he assert under oath that he had told his counsel to report the matter for him. He admitted before us to not being sure even now that he has the obligation to report the fact of the appeal. We make no ruling on that, as the real issue is the issue regarding the consequence of suspension, that is, the failure to report the change in the sentence to one involving imprisonment.

40. On that issue, Mr. Torske says two things. The first is that it was his counsel's job, and he thought it would be done by his counsel, that his lawyer would report on his behalf to the Law Society as he had when he wrote his letter of November 21, 2013, which first advised of the conditional discharge and probation pronounced by the Provincial Court.

41. Mr. Torske's second response is that he also relied on the statement from the Court of Appeal that the Court itself would be reporting to the Law Society. Paragraph 18 of the Agreed Facts says, "The Court of Appeal directed, on the record and in the presence of both Torske and his counsel, Mr. Foster, that the Deputy Registrar send a copy of the appeal record, factums and the reasons of the Court to the Law Society." In Paragraph 12 of *R v Torske*, CA, the majority says: "The Deputy Registrar will send a copy of the appeal record and factums and these reasons to the Chair of the Discipline Committee of the Law Society of Alberta."

42. Mr. Torske testified that at the oral hearing the Court had used the word "forthwith," and that his expectation was that that information would be sent to the Law Society forthwith. That testimony was not undermined on cross-examination by the Law Society. We found Mr. Torske to be credible. He had no hesitation in taking the stand to explain his position regarding what can objectively be seen as a failure to report in accordance with Rule 105. He appeared to us to be forthright and honest.

43. On a key document, he was very credible. The Law Society's view on Exhibit 15 is that Mr. Torske might have misled the Law Society. Exhibit 15 is a letter sent by the Law Society Practice Review dated April 18, 2013. It constitutes the undertaking of Mr. Torske to the Law Society. The Law Society relied on the last paragraph of Exhibit 15, which states:

> We are also requesting you provide a written update on or before December 9, 2013, advising the outcome of the Court decision with respect to the conditions imposed and advising if you receive a complete discharge. In addition, we note we have not received a copy of the transcript of the Pre-Sentence Hearing of November 2012. Please include a copy of that document with your signed undertaking. If you have any questions in the interim, please contact Barbara Cooper, Manager, Practice Review, 403-229-4720. Thank you.

44. Mr. Torske signed that document on May 3, 2013. The importance of those dates is obvious. On April 16th, the sentence changed. On April 16, Mr. Torske had an obligation to report. On May 3, he signed a document directly and positively communicating with the Law Society of Alberta and did not in this document indicate to the Law Society that the appeal had occurred, that the result had changed, and that he had been sentenced to the equivalent of a term of imprisonment. He did not report, yet he was sending a document dated May 3 to the Law Society.

45. There has been confusion with respect to that point in other proceedings involving Mr. Torske. A committee of Benchers conducting an application under section 108 of the Rules of Law Society said that the evidence, by which the committee meant the above-quoted paragraph from the undertaking, was that the Law Society knew that the appeal had occurred. That was a mistake made by that Committee, and, before us, Mr. Torske conceded that it was a mistake. He stated, essentially against his interest, that it was clear from the language of this letter that the Law Society did not know of the appeal at that time. He conceded further that, in reading it again before us, he clearly saw that the Law Society did not know about the appeal of the sentence on May 3. He testified that, at the time of the letter, coming as it did on the heels of the Court of Appeal decision, ***he read it as though*** the Law Society knew about the appeal and ***as though*** the Law Society was reacting to the sentence delivered by the Court of Appeal ***even though, as he conceded, that language is clearly not written there***.

46. We believed him on that issue, and it gave us real assurance regarding his credibility.

47. As a result, we concluded that Mr. Torske had no intent to deceive. He did not give any indication that he was aware of any advantage to him of not reporting in the sense of being able to continue his practice for a further two months without being suspended. He was relying on his counsel. He was relying on the Court of Appeal. He was waiting for the Law Society through Practice Review and through Conduct. He testified that he was surprised on June 5 when he received the letter announcing that he had been suspended and that that suspension was retroactive to April 16. We also believed him on that. We do not think that his failure to report was intentional. We do not think that any mental element has been proved.

48. a) Did he breach Rule 105 as it interacts with section 83(7)? Probably.

b) Did he fail to be candid? No.

c) Was his conduct deserving of sanction? No.

We therefore found that Mr. Torske is not guilty of Citation 3.

Sanction

49. A version of our finding of guilt was given orally by the Chair of the Hearing Committee at the beginning of the afternoon session of the first day of the hearing. What then followed was three and a half full days of testimony, primarily expert testimony, and a half day of oral argument on sanction.

50. At first glance, one might wonder what all that evidence was about and why it was necessary. After all, section 49 of the *Legal Profession Act* provides the primary purpose of the disciplinary process and therefore of the sanctioning process in hearings such as this. It 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.

Section 49 provides the fundamental purpose of the sanctioning process and may well delimit the jurisdiction of a hearing committee such as ours: to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

51. In the Provincial Court of Alberta, pursuant to charges under the *Criminal Code*, Mr. Torske admitted to having forged 40 to 50 prescriptions for various narcotics between March of 2010 and June of 2011, to having fraudulently created a prescription pad, forging the signature of his doctor, of breaching the trust of his doctor, all while practicing first as a Crown prosecutor and later as a member of the criminal defence bar (The decision of the Provincial Court will be referred to hereafter as *R v Torske*, PC".).

52. Further, he admitted to the Law Society that: he regularly used cocaine from April 2012 to February 2013; he was addicted to pain medication; and he committed forgery in order to feed his addiction. Before us, under oath, he freely admitted all of that and admitted his guilt.

53. Had all of that come before the Hearing Committee in 2011, 2012, or 2013, we have little doubt about the result: Mr. Torske would have been disbarred.

54. Instead, Mr. Torske was brought before us in 2015, and, as explained to us through the evidence of both parties related to sanction, much has changed. Where there might once have been no doubt that the appropriate sanction pursuant to section 49 of the Act

was disbarment, based on the evidence tendered that no longer appears to us to be the case, and, as stated above, we have come to the conclusion that the protection of the public and of the standing of the legal profession can be appropriately dealt with by a suspension of 18 months. Mr. Torske has sought and obtained extensive treatment, has succeeded in controlling his addictions, has obtained and maintained regular employment as a paralegal with positive evaluation by his employers, has stabilized his family situation, and has gotten himself to the point where he has persuaded his counsel, his employers, and his doctors that he is ready to return to the practice of law after a suspension that has now lasted more than two years.

55. That Mr. Torske might be ready to practice and that he has lined up witnesses who have testified persuasively in favour of that situation presented us with the difficult question: why disbar a member who is now ready to apply for reinstatement and who might well succeed in his reinstatement application?

Positions of the Parties on Sanction

56. The Law Society seeks Mr. Torske's disbarment, asserting it as the only proper sanction in the circumstances, while Mr. Torske seeks immediate reinstatement and proposes protection of the public by way of a program of supervision and testing over the next few years and potentially in perpetuity.

Position of the Law Society

57. We were greatly assisted by the very able submissions of counsel to the Law Society. She sifted through the evidence, neatly pointed to the important parts of the evidence, rendered easily comprehensible the expert evidence, and focused the issues with authority. We are grateful to her for the excellent work she did here. We also congratulate her for maintaining appropriate prosecutorial balance and fairness despite forcefully pursuing and arguing in favour of Mr. Torske's disbarment.

58. She also made it clear that, while she sympathizes with Mr. Torske and his situation, the public interest and the interest of the legal profession generally require disbarment.

59. The Law Society's position is that Mr. Torske deliberately and repeatedly committed 40 to 50 acts of forgery in violation of the *Criminal Code* and in violation of his oath as a Barrister and Solicitor to uphold the law and not to breach it. In doing so, he demonstrated an absence of integrity; his conviction for those crimes and his admission of them before us are proof of his dishonesty. The Law Society acknowledges Mr. Torske's mental illness, his Bipolar II disorder, and it acknowledges the causal influence of his addictions on his criminal conduct. The Law Society also recognizes the important and essentially successful steps that have been taken by Mr. Torske to treat his mental illness and to deal with and control his addictions. However, the Law Society says, despite what appear to be mitigating factors, Mr. Torske's criminal conduct must be

denounced. In the interest of maintaining public confidence in the legal profession, the Law Society asserts that nothing less than disbarment is acceptable.

60. As sympathetic a character as Mr. Torske now is and as humbly as he presents himself, the Law Society asserts, on the basis of the evidence of its expert in psychiatry and addictions, that there runs through Mr. Torske's story from very early days, a black thread darkening his fundamental character, an absence of integrity and a recurring dishonesty that make Mr. Torske an intolerable risk to the public such that he should be disbarred.

Position of Mr. Torske

61. Mr. Torske wants to practice, to be a lawyer. His work colleagues say he is a good lawyer. There is a public interest in having good lawyers practice. His addictions are in sustained remission. His Bipolar II disorder is being treated, medically and by way of regular therapy with a practicing psychiatrist.

62. On sanction, therefore, Mr. Torske's position is that:

a) He not be disbarred. There is no need for further denunciation, which was taken care of by the Court of Appeal when it imposed a sentence of the equivalent of incarceration for his crimes. Also, there is no need for further specific deterrence, which, in addition to the jail term, has been taken care of by the suspension from practice to which he has been subject since June of 2013. His position is also consistent with the idea that general deterrence has been soundly engaged and promoted by that suspension, which, at the date of the last oral hearing on July 8, amounted to 25 months.

b) He be permitted now to return to practice, in a kind of staged release or reintegration, involving various time periods and various levels of supervision by various types of supervisors, multi-faceted reporting, and ongoing treatment, all subject, upon breach or relapse, to review by the Benchers, which review might result in further suspension.

63. Mr. Torske denies any fundamental flaw in his character, and asserts, both himself and through the witnesses called by him, the contrary, stating that the choices he made to forge prescriptions and to obtain and consume illicit drugs were caused by his addictions and his then-undiagnosed and therefore then-untreated mental illness, Bipolar II disorder.

Causation and Integrity

64. The hardest fought issue before us surrounded causation and its effect on judgments regarding integrity. Mr. Torske, his expert, and his psychiatrist all assert causation akin to the "but-for" variety: Mr. Torske being a member in good standing, willing and able to fulfill his ethical and professional obligations would not have committed any crimes or

done any of the wrongful acts attributed to him had he not, quite by accident and unintentionally, developed an addiction to opioids. But for that addiction, acquired unwittingly, his career would have carried on much as before, honourably and without incident.

65. The Law Society disagrees. Based primarily on the evidence of its expert, the Law Society argues that Mr. Torske's position goes too far in denying choice. Essentially, the Law Society asserts that addiction does not cause crime, does not force its victims to commit bad acts. To the contrary, the Law Society says, each time a bad act is committed by an addict it is an act of willfulness, of individual volition, a choice. Each time Mr. Torske chose to forge false prescriptions, he did so knowing that he was doing something illegal, and he chose to proceed. Those repeated bad choices, says the Law Society, demonstrate that Mr. Torske lacks the integrity necessary to continue as one of its members.

Jurisdiction of a Hearing Committee

66. A hearing committee has the power to find, or not to find, guilt. If a hearing committee finds guilt, it has the power to end a lawyer's career or to suspend that career and impose a penalty. A hearing committee also has the power to reprimand and, in doing so, it is hoped, to give a lawyer's career a better sense of direction. In light of those powers, enormous from the point of view of the lawyer facing citations and placed under the jurisdiction of a hearing committee, one might well be forgiven for thinking that a hearing committee has unlimited powers to order anything fitting within the broad range from dismissal to disbarment, including, as is sought here by Mr. Torske, varying forms of conditional reinstatement and permanent supervision and reporting.

67. A hearing committee, after a finding of guilt under section 60 of the Act, which is the case here, can impose the sanctions set out in section 72 of the Act. It can reprimand, suspend, or disbar, impose a penalty, exact costs, impose conditions on a suspension or impose conditions on a member's practice. A hearing committee does not have the power to reinstate a suspended member or to impose conditions on any future reinstatement of a suspended member.

68. The submissions on behalf of Mr. Torske did not seem to appreciate the limitations on our powers, that is, the limited jurisdiction of a hearing committee. In light of the number of previous cases in which hearing committees appear to have exceeded their jurisdiction or to have ignored the limitations of their jurisdiction, Mr. Torske's confusion is understandable. We thought it worth setting out the regulatory structure created by the *Legal Profession Act* and by the Rules of the Law Society of Alberta so that the limits of our jurisdiction are well understood.

69. Under the Act, the Benchers have extensive powers. They are set out in section 5 of the *Legal Profession Act*. Section 7 of that Act sets out the powers of the Benchers to create rules and says, in relevant part:

> **7(1)** The Benchers may make rules for the government of the Society, for the management and conduct of its business and affairs and for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act.
>
> **(2)** Without restricting the generality of subsection (1), the Benchers may make rules
>
> . . . .
>
> (i) respecting the reinstatement of
>   i. a former member as a member,
>   ii. an inactive member as an active member, or
>   iii. a former student-at-law as a student-at-law,
>
> and respecting the terms and conditions on which reinstatement may be granted;
>
> (j) respecting the termination of a suspension of the membership of a member or of the registration of a student-at-law, and respecting the conditions on which a termination may be granted;
>
> . . . .
>
> (aa) respecting the establishment, composition and manner of appointment of committees for any purpose under the rules and the powers and duties of a committee so established, and respecting additional powers and duties of a committee established by this Act;

70. Part 3 of the *Legal Profession Act* deals with the "Conduct of Members".

71. In that Part, section 51 establishes three distinct committees, as follows (in relevant part):

> **51(1)** The following committees are established:
>
> a) the Conduct Committee, the members of which are appointed by the Benchers . . . .;
> b) the Practice Review Committee, the members of which are appointed by the Benchers . . . .;
> c) the Appeal Committee . . . .

72. Also in Part 3, section 52 permits the Benchers to make rules specific to the conduct of members. That section says the following, in relevant part:

52(1) The Benchers may make rules

a) respecting the powers and duties of persons conducting investigations;
b) respecting the proceedings of the Conduct Committee, the Practice Review Committee and the Appeal Committee and the powers and duties of those Committees and of their chairs and vice-chairs;
c) respecting the powers, duties and proceedings of a Hearing Committee;
d) respecting the powers and duties of the Executive Director and of members and other persons in relation to any proceedings under this Part;
e) respecting the powers, duties and proceedings of the Benchers under this Part;
f) respecting the powers, duties and proceedings of a Board of Examiners, and respecting any matter pertaining to courses of study that may be specified by the Practice Review Committee for the purposes of section 73;
g) respecting the determination of costs that may be attributed to proceedings under this Part and the powers and duties of a Hearing Committee or the Benchers, as the case may be, in making orders under this Part against a member or former member for the payment of all or part of those costs;
h) respecting any other matter incidental to the administration of this Part.

(2) Rules under subsection (1)(g) may, without limitation, include in the classes of costs attributable to proceedings under this Part reasonable costs for the indemnification of the Society for the cost of services performed in connection with those proceedings by any of its salaried employees.

73. Unlike the permanent committees formed by section 51, hearing committees are formed as needed, pursuant to section 59, as follows:

59(1) Subject to section 60(3), if the Conduct Committee directs that the conduct of a member is to be dealt with by a Hearing Committee,

a) the Executive Director, on being informed of the direction, shall give the member notice of the hearing and of the acts or matters regarding the member's conduct to be dealt with, with reasonable particulars of each act or matter,

b) the chair of the Conduct Committee shall appoint a Hearing Committee consisting of 3 or more persons, at least one of whom must be a Bencher or former Bencher, and

c) the Hearing Committee so appointed shall hold a hearing respecting the member's conduct.

. . . .

74. As was done here by Mr. Torske, the *Legal Profession Act* creates the possibility for a member to submit facts and admissions and to admit guilt with respect to any particular conduct, as follows:

> **60(1)** Subject to the rules, a member may, at any time after the commencement of proceedings under this Division regarding the member's conduct and before a Hearing Committee makes its findings in respect of the member's conduct, submit to the Executive Director a statement of admission of guilt of conduct deserving of sanction in respect of all or any of the acts or matters that are the subject of the proceedings.
>
> **(2)** A statement of admission of guilt shall not be acted on until it is in a form acceptable to
>
> (b) the Hearing Committee, if the statement is submitted on or after the day on which the Hearing Committee is appointed.
>
> **(4)** If a statement of admission of guilt is accepted, each admission of guilt in the statement in respect of any act or matter regarding the member's conduct is deemed for all purposes to be a finding of
>
> (b) the Hearing Committee that accepted the statement,
>
> . . . that the conduct of the member is conduct deserving of sanction.
>
> **(5)** The Hearing Committee . . . that accepted the statement . . . shall proceed with a hearing for the purpose of making its determination, if any, under section 71(4), its order under section 72 and its order, if any, under section 73.

75. Section 73 and section 71(4) do not apply here, as they deal with a hearing committee that has made a finding of a member's incompetence. Pursuant to section 60 therefore, the powers of the currently constituted Hearing Committee are set out in section 72.

76. Section 72 of the *Legal Profession Act* expressly gives a hearing committee only three choices when it comes to the available sanctions after a finding of guilt: disbarment, suspension, or reprimand, the latter two either with or without a fine, and the payment of costs of the investigation and the hearing. Section 72 says the following:

> **72(1)** If a Hearing Committee finds that a member is guilty of conduct deserving of sanction, the Committee shall either

(a) order that the member be disbarred,
(b) order that the membership of the member be suspended during the period prescribed by the order, or
(c) order that the member be reprimanded.

(2) In addition to an order under subsection (1), the Hearing Committee may make one or more of the following orders:

(a) an order that imposes on the member conditions on the member's suspension or on the member's practice as a barrister and solicitor, a requirement that the member appear before a Board of Examiners, or any other condition or requirement permitted by the rules;

(b) an order requiring the payment to the Society, for each act or matter regarding the member's conduct in respect of which the Committee has made a finding of guilt, of a penalty of not more than $10 000, within the time prescribed by the order;

(c) an order requiring the payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order.

(3) A suspension order made under subsection (1)(b) may be terminated by the Benchers on their own motion or, subject to the rules, on application.

(4) If the Hearing Committee makes an order of suspension or reprimand under subsection (1), it may also make an order directing that the member is not ineligible for nomination or election as a Bencher by reason of the finding of guilt on which the order is based.

(5) The Society may, by an action in debt, recover any penalties or costs payable under an order made pursuant to subsection (2) from the person required to pay them.

77. A hearing committee does not have any power under the Act to reinstate, and the Rules of the Law Society of Alberta do not empower a hearing committee with any jurisdiction regarding reinstatement. Reinstatement may be required in the following circumstances.

a) If a hearing committee decides to disbar, reinstatement is dealt with by section 86 of the *Legal Profession Act* and jurisdiction for doing so is granted to the Benchers.

b) If the hearing committee decides, under section 72, to suspend a member for conduct deserving of sanction, the jurisdiction to consider the application for reinstatement after that period of suspension is granted to the Executive Director under Rule 115 of the Rules of the Law Society of Alberta, and that is the case even if the period of suspension is only one day.

78. Reinstatement after disbarment is dealt with by section 86 of the Act which empowers, not a Hearing Committee, but the Benchers, as follows:

86(1) If a person is disbarred,

(a) that person shall not be reinstated as a member pursuant to the rules except by an order of the Benchers, and

(b) no order for that person's reinstatement as a member shall be made within one year after

i. the date on which the person was disbarred,

ii. if the operation of an order of a Hearing Committee to disbar the person was stayed under section 75(7) and the order was confirmed by the Benchers on appeal, the date of the Benchers' confirmation order, or

iii. if the operation of the Benchers' confirmation order referred to in subclause (ii) was stayed under section 80(8) and the Hearing Committee's order was confirmed by the Court of Appeal, the date on which the Court of Appeal made its confirmation order. [*emphasis added*]

(2) A Bencher who is a member of a committee of inquiry appointed pursuant to the rules to consider an application for reinstatement to which subsection (1) applies may participate in or vote at any proceedings of the Benchers pertaining to the application.

79. Rule 115 empowers the Executive Director to deal with all other reinstatement applications, and says the following:

115 (1) Any

a) inactive member who seeks reinstatement to active status,
b) active but not practising member who seeks reinstatement to practising status,
c) suspended member who seeks to be reinstated to any other status,
d) student-at-law who
   i. has not worked as an articling student for the past twelve months and
   ii. seeks to be enrolled as a member or to resume articling

must apply to the Executive Director by submitting a completed Application Form in Form 4-1.1. Suspended members may initiate their applications prior to the conclusion of the suspension so that any conditions imposed may be met prior to the conclusion of the suspension.

(1.1) Before the Society will begin to process an application under this Rule, Form 4-1.1 must be completed and submitted and the prescribed reinstatement application fee must be paid.

(1.2) Notwithstanding subrule (1.1), an applicant who seeks reinstatement to active status and provides an undertaking acceptable to the Executive Director to

provide legal services exclusively through a pro bono provider approved by the Executive Director is exempt from the payment of the prescribed reinstatement application fee.

(2) An applicant under this rule must provide the following prior to the conclusion of the reinstatement application in order to be reinstated:

(a) Repealed November 2002

(b) Repealed November 2002

(c) the prescribed annual fee for the current year;

(d) where the member has been inactive, the prescribed annual fee for inactive members for each of the previous years in which the applicant elected not to pay the annual fee for inactive members, unless the applicant, at the time of non-payment, was an inactive member (retired) or a Master in Chambers;

(e) subject to subrule (2.1), the Assurance Fund levy and/or the trust safety insurance assessment for the current year;

(f) the professional liability insurance assessment for the current year, or proof that the applicant will be exempt from the payment of that assessment on being reinstated as an active member;

(g) payment of any other amount owing by the applicant to the Society or ALIA; and

(h) if the applicant had been a bankrupt, payment of the amount of any debt owed by the applicant to the Society before the bankruptcy and which was extinguished as a result of the bankruptcy proceedings.

(2.1) An applicant who seeks reinstatement to active status and provides an undertaking acceptable to the Executive Director to provide legal services exclusively through a pro bono provider approved by the Executive Director is exempt from the payment of the Assurance Fund levy and/or the trust safety insurance assessment for the current year.

(3) Subject to subrule (4), the Executive Director shall grant an application for reinstatement under this Rule if the Executive Director is satisfied that:

(a) all the requirements of subrule (2) have been complied with; and

(b) the applicant has complied with all preconditions to the applicant's reinstatement imposed by the Credentials and Education Committee, the Conduct Committee or the Practice Review Committee pursuant to Rule 118.

(4) The Executive Director shall not grant an application for reinstatement under this Rule where the application was referred to the Credentials and Education Committee, the Conduct Committee or the Practice Review Committee under Rule 118(1), and any one of those Committees informs the Executive Director that it objects to the granting of the application, unless the Benchers, on appeal from the Committee, approve the granting of the application.

(5) If an application under this Rule is refused, all amounts paid in connection with the application, except the application fee, shall be refunded.

(6) Where the applicant is a former Master in Chambers, the provisions of Rule 117 apply to any reinstatement or application for reinstatement under this Rule.

80. As referenced in Rule 115, the Executive Director may, under Rule 118, refer reinstatement applications to any of several permanently established Law Society Committees, including the Conduct, Credentials and Education, and Practice Review Committees. Of specific interest to this Hearing Committee is Rule 118(1)(c), which deals with suspended members such as Mr. Torske in their applications for reinstatement, as follows:

> **118(1)**(c) The Executive Director may refer an application for reinstatement made under Rule 115 or 116 to the Practice Review Committee
>
> i. where the Executive Director has reason to believe that the applicant's conduct has at any time been adversely affected by substance abuse or that, if the applicant were reinstated as a member, the applicant's competence to practise as a barrister and solicitor might be adversely affected by mental or physical disability or by substance abuse; or
>
> ii. where the Executive Director is satisfied for any other reason that the application should be referred to that Committee.

81. Rule 118(1)(a)(i) essentially creates a discretion in the Executive Director to delegate a reinstatement application to the Law Society Committee best positioned to consider the issues raised in that application. At first glance, therefore, one could argue that, if there were an extant application for reinstatement by Mr. Torske, it could be referred to this Hearing Committee, as we are well-situated to deal with the issues, having heard the expert and other evidence regarding Mr. Torske's substance issues, his mental health issues and all the rest. However, a Hearing Committee is the one type of committee expressly excluded from that general power of delegation available to the Executive Director in Rule 118(1)(a)(i). That Rule says the following:

> **118 (1)**(a) The Executive Director:

i. may refer an application for reinstatement made under Rule 115 or 116 to the Committee where, in the opinion of the Executive Director, the circumstances of the application warrant review of the applicant's current knowledge of Alberta law and practice; . . . .

82. The Interpretation section of the Rules, section 1, defines "Committee" but it expressly excludes a Hearing Committee. Rule 1(1)(g) says:

> i. 1(1)(g) "Committee" means a committee established by the Act or these Rules or pursuant to section 6(c) of the Act or a subcommittee of a committee so established***, but does not include a Hearing Committee*** *[emphasis added]*

83. Once the Executive Director has delegated his or her power under Rule 118 to a Committee, that Committee can do what is needed to come to a conclusion and, once a conclusion is reached, the Committee can impose conditions, pursuant to Rule 118(2)(b)(iii), which says:

> **118(2)** Where an application for reinstatement is referred to the Credentials and Education Committee, the Conduct Committee or the Practice Review Committee under this Rule, the Committee
>
> a) shall review the application and the matters referred to it and for that purpose may conduct any investigation it considers appropriate; and
>
> b) on concluding its review, shall decide whether to
> i. approve the applicant's reinstatement,
> ii. object to the applicant's reinstatement, or
> iii. approve the applicant's reinstatement subject to any conditions or requirements imposed by the Committee under subrules (3), (4) or (5),
>
> and shall give reasons for its decision.

84. Rules 118(3), (4), and (5) set out the following:

> **(3)** For the purposes of subrule (2)(b)(iii), a Committee may do one or more of the following:
>
> (a) make an order imposing conditions on the applicant's practice as a barrister and solicitor if the applicant is reinstated as a member;
>
> (b) require the applicant to furnish an undertaking, in a form satisfactory to the Committee, that the applicant's practice as a barrister and solicitor will be carried on subject to the conditions in the undertaking if the applicant is reinstated as a member; or
>
> (c) make an order imposing any other conditions that the Committee considers appropriate in the circumstances and that are to be met before the applicant

is reinstated or that will apply to the applicant after the applicant's reinstatement.

(4) The conditions that may be imposed in an order under subrule (3)(a) or in an undertaking given under subrule (3)(b) may, without limitation, consist of or include any of the following:

(a) a condition that the applicant's practice be restricted to any specified field or fields of law;

(b) a condition that the applicant be prohibited from practising in any specified field or fields of law; and

(c) a condition that the applicant's practice be carried on under the direct supervision of one or more of the active members named in the order or undertaking.

(5) Where an application is referred to the Credentials and Education Committee, the conditions that may be imposed may require the applicant to:

(a) complete to its satisfaction a course or courses of study specified by the Committee; or

(b) pass any examinations prescribed by the Committee.

85. Finally, Rule 89 establishes the Practice Review Committee as the committee that generally reviews and assesses members, their fitness for practice, and their conditions of practice. Rule 89 says:

89 (1) The Practice Review Committee may sit in panels of a minimum of 3 members each, at least one of whom must be a Bencher, for the purposes of

(a) conducting reviews under section 58 of the Act;
(b) dealing with referrals made by the Executive Director under Rule 118; and/or
(c) making any decision on any other matters under the Rules or Part 3 of the Act.

(2) All 3 members of a panel of the Practice Review Committee constitute a quorum at a meeting of the panel.

(3) Nothing in this Rule affects the ability of the Practice Review Committee to exercise or perform the power or duty delegated to a panel, nor to exercise the power of delegation under section 58(2) of the Act.

86. The Practice Review Committee also has jurisdiction over the longer term of members referred to it through the broad jurisdiction for corrective and supervisory action established in section 58 of the *Legal Profession Act*, which says the following:

58(1) The Conduct Committee, at any time during or after a review by it under section 56 of a member's conduct, may direct the Practice Review Committee to carry out a general review and assessment of the member's conduct in addition to the review under section 56.

(2) On being directed to carry out a review and assessment under this section, the Practice Review Committee may delegate the carrying out of any aspect of the review and assessment to a subcommittee consisting of one or more persons, whether they are members of the Practice Review Committee or of the Society or not, and in that case, the subcommittee shall submit a written report containing its findings and recommendations to the Practice Review Committee.

(3) The Practice Review Committee, in the course of a review and assessment carried out under this section, may require the member concerned to answer any inquiries or produce any records or other property that the Committee considers relevant for the purposes of the review and assessment.

(4) After concluding its review and assessment, the Practice Review Committee may

a) make recommendations to the member concerned that it considers will, if followed, improve the conduct of the member in relation to the member's practice as a barrister and solicitor;

b) obtain the member's undertaking respecting restrictions on the member's practice as a barrister and solicitor or the conditions on which the member's practice as a barrister and solicitor will be carried on.

(5) The Practice Review Committee shall submit a report to the Conduct Committee containing the results of a review and assessment carried out under this section and any recommendations made to the member under subsection (4).

(6) The Practice Review Committee may from time to time inquire into the manner in which the member has followed or is following the recommendations made to the member under subsection (4) and, on being satisfied that the member has not been or is not following the recommendations, the Practice Review Committee may submit a further report on the subject to the Conduct Committee.

(7) On receiving a report of the Practice Review Committee, the Conduct Committee may, with respect to any conduct of the member that is mentioned in the report,

(a) direct that an investigation be made into the conduct and, on receiving the report of the investigator, direct that the conduct be dealt with by a Hearing Committee, or

(b) direct that the conduct be dealt with by a Hearing Committee.

87. The regulatory structure is thus complete, thoughtfully and persuasively constructed to ensure the protection of the public interest and that the interests of the profession are served. A hearing committee only has a small role in the overall regulatory structure. Its role is vital, but small: to determine guilt and, if found, to sanction it.

88. Mr. Torske's suggested sanction and his proposal for staged reintegration into legal practice misunderstands the nature of this Hearing Committee, treating it as if it has the equivalent of a superior court's inherent jurisdiction to remedy all of the disputes and issues that come before it or the equivalent of a court with the broad jurisdiction of section 8 of the *Judicature Act*, R.S.A. 2000, c. J-2. This Hearing Committee cannot:

a) reinstate Mr. Torske;
b) limit the kinds of legal matters he could perform or conduct;
c) limit the kinds of legal areas in which he could practice;
d) restrict his client contact;
e) exact or require undertakings from persons who are not parties before us, such as Mr. Foster and Ms. Beyak, which undertakings were available to the Benchers only because the Section 108 Resolution resulted from an application by Mr. Foster, not by Mr. Torske;
f) require Mr. Torske to participate with, or to report to, Practice Review;
g) restrict Mr. Torske's use of trust funds or trust accounts;
h) require ongoing medical care;
i) require abstinence from alcohol, non-prescription drugs, or from prescription drugs that are not actually prescribed;
j) require ongoing urine or blood testing; or
k) any of the other things required as conditions or undertakings on the proposal of Mr. Torske.

89. We therefore now turn to those matters over which we do have jurisdiction: selecting the appropriate sanction for conduct deserving of sanction and the hard choice between disbarment and suspension.

Key Evidence

90. In June of 2008, Mr. Torske injured his knee. He suffered enormous pain. While he was awaiting surgery, his family physician prescribed, at various times and in combination, Tylenol 3, Percocet (Oxycodone and Acetaminophen), Supedol (Oxycodone) and Dilaudid (an opioid pain medication). Surgery was performed in September of 2009.

91. Following surgery, Mr. Torske took a leave of absence from his employment for approximately two months while rehabilitating his knee and dealing with "withdrawal issues" from the addictive medications he had been prescribed for more than a year.

92. During a break-in at his home on January 16, 2010, Mr. Torske was stabbed in the chest and forearm and struck with a metal pipe to his surgically repaired knee. Prior to and

during transport to the hospital, Mr. Torske was administered morphine. After discharge, he was prescribed Percocet and Tylenol 4 to assist in pain control.

93. On June 3, 2011, Mr. Torske contacted ASSIST and sought assistance for his addiction issues.

94. In his Reasons for Judgment in *R v Torske*, PC, Judge Spence said, among other things (paragraph 2):

> [2] … He [Mr. Torske] has been addicted to prescription drugs for many years, which addiction commenced by no fault of his own. He has been under the care of his family physician for some time and, as part of his treatment for physical pain, he was prescribed drugs and, as a result, became dependent on them. …

95. Despite disagreeing with the sentence and sentencing considerations of Judge Spence, the majority of the Court of Appeal did not disagree with Judge Spence's factual characterization or the conclusions contained in the above-quoted statement.

96. A week after Mr. Torske advised ASSIST of his addition issues, his family physician, Dr. Yip, informed the police that Mr. Torske had been forging and uttering prescriptions for painkillers. From there, all the key events unfolded, from criminal charges to a conviction and a sentence imposing the equivalent of jail time, from reporting himself to being suspended, and from moving from untreated to treated for his addiction and his Bipolar II disorder.

Addiction, Mental Illness, Integrity, and Choice

97. In the oral and written submissions by counsel, it became apparent that what divided them was their characterization of the facts, evidence, and expert opinions around what the Law Society has called the concern about Mr. Torske's integrity. The Law Society stated the following in its written reply submissions, dated April 16, 2015:

> 2. Mr. Torske's proposal for leniency in this case is entirely dependent upon the Hearing Committee's acceptance of his submissions that his criminal conduct was caused by his drug addictions and his undiagnosed mental health issues. If Mr. Torske's view of causation is accepted by the Hearing Committee, his drug addictions and mental health disorder may be considered mitigating factors by the Hearing Committee [See *Wright v. College and Association of Registered Nurses of Alberta*, 2012 ABCA 267]. Absent such mitigating factors, it would be difficult to argue that disbarment is not the appropriate sanction for Mr. Torske's repeated, deliberate criminal conduct.

98. The Law Society asserts, on the basis of the independent expert opinion of Dr. Charl Els that Mr. Torske's drug addictions and mental disorder do not fully account for his criminal conduct. Mr. Torske, on the basis of the independent expert opinion of Dr. George P.

Duska, and the psychiatric evidence of Dr. Salim Hamid, asserts that his addictions and his mental disorder fully account for his criminal conduct, that they caused it and that he should therefore be at least partially excused from the misconduct in the sense of having his sanction mitigated, from disbarment to suspension.

99. During his examination-in-chief, Mr. Torske told a story that would draw a tear from the driest eye. He had several very clear memories of the time that he was suffering from the various issues that plagued him in 2011, and this was his description of one of them.

> Mr. Lutz: And you're talking about the time preceding March 2011 where you said there was a sliding or -- sorry, these are my words -- a deterioration?
>
> Mr. Torske: Yeah. Much like there had been precipitating the prior time period, a sliding of my mental health that continued unabated to the point where I could no longer stand it anymore.
>
> Q. So what did you do?
>
> A. I resumed writing the false prescriptions. It was not -- it was -- there were better choices I could have made, let's put it that way, but that's the choice I made so I have to live with it.
>
> Q. And how did -- how did this happen? What did you do in terms of to effect your accessing these narcotics?
>
> A. Well, I just remember -- I remember sitting with [my son], who was probably -- I think he was four -- three or four at the time, and I was feeling profoundly suicidal. And I thought that there was just no way that I could do that to him, to … my other son, to my wife, …. I couldn't do that to them. And I got fairly desperate. I think I took my vehicle, left the house, drove around downtown, thought about maybe trying to find someone to buy some drugs from, to do something other than resuming the forging of prescriptions. I decided to try and wait -- wait it out. I went home, couldn't sleep. I remember that. The next morning when I got up, that's when I wrote the next prescription. I went straight from getting up in the morning to the pharmacy.
>
> Q. This deterioration, this low feeling you talked about, was it as a result of your Bipolar issue or your drug addiction issue? Or could you say?
>
> A. I can't say definitively. I don't know.
>
> Q. All right. So you then said you decided the next day to resume writing these prescriptions?
>
> A. Right.
>
> Q. Tell us about that.

A. Same process as before. I think -- again, I scavenged around the house and found an unused note or prescription, because I had thrown out all the ones that I had used to make my own prescription pad. And I had made another one, a new one again, by photocopying it, and I went and passed off the prescription and resumed taking the codeine again.

Q. And taking this codeine, just tell us from your point of view how you felt taking it compared to how you were feeling before you started writing -- before you started to rewrite the prescriptions?

A. There were mixed feelings. I mean, I felt horrible and guilty about doing it. There was a huge amount of anxiety. Am I going to get arrested? Are people going to find out? What am I doing to my friend? What am I doing to myself? Mixed with the relief I got when I took it because physically my body would feel better and mentally my spirits would improve somewhat.

100. Out of stories like that, we are asked to conclude, as were the experts, whether his choice to commit the crime of forgery was caused by his addiction and mental disorder or whether some deeper issue, an integrity issue, was more central to his illegal decision-making, albeit while being influenced by addiction and mental disorder as causal factors but non-determinative ones.

101. That evening, Mr. Torske thought he had three choices: 1) commit suicide; 2) buy street drugs; or 3) forge prescriptions and obtain the drugs to which he was addicted.

102. The rational, objective person adds: there was another choice. He could have picked up the phone -- called a doctor, or called ASSIST, and sought treatment. Nothing, the rational person continues, about his addiction was forcing him to choose among three different crimes. He was a lawyer. He knew the difference between right and wrong. He chose “wrong”, in breach of the law and in breach of his oath and obligations as a member of the Law Society of Alberta. His addiction did not cause him to scrounge for a paper, to create a prescription, to forge a signature. He felt guilt and fear, and made the selfish choice, committing a crime.

103. That rational, objective person is correct, but we wonder whether he is right. We think he might be wrong.

104. The expansion of the list of available choices by that reasonable person brings to mind the choices that were said to be available to Lyn Lavallee when she shot Kevin “Rooster” Rust in the back of the head as he walked out of the room in which he had been shouting at her and threatening her a few seconds before. A victim of battered spouse syndrome, Ms. Lavallee acted in self defence, her doctors said, feeling she had no choice but to shoot Rooster before he came back and shot her. She had another choice, it was said by rational, objective people in hindsight, obviating the defence of self defence: she could have picked up the phone -- called the police, called a taxi, moved

out, run away with her friends. Nothing forced her to shoot Rooster in the back of the head as he was leaving the room. The syndrome did not cause the trigger to be pulled (see *R v Lavallee*, [1990] 1 SCR 852).

105. In that case, the Supreme Court of Canada made a revolutionary decision, on the basis of psychiatric evidence, trying to understand real humans in real circumstances. From the point of what is relevant to the case before this Hearing Committee, that Court decided that, in Ms. Lavallee's circumstances, the so-called reasonable choice was no choice, unavailable to her as the result of battered spouse syndrome, and she was exonerated.

The Expert Evidence of the Law Society

106. For the Law Society, Dr. Charl Els testified. He was qualified to provide independent expert opinion evidence on issues of psychiatry and addiction. He testified, and three of his reports were tendered. The first was a "Document Review" dated April 2, 2014 (Exhibit 36), which was written to support the Law Society's position at Mr. Foster's section 108 application before the Benchers. That Document Review was referenced by Dr. Els in his "Independent Psychiatric Evaluation", dated July 22, 2014 (Exhibit 38). Dr. Els also prepared a further "Document Review", dated January 15, 2015, in which he responded to the opinions of Dr. George P. Duska, a statement by Dr. S. Hamid, and other information that arose between the time of his July Report and the end of 2014 (Exhibit 40).

107. Dr. Els was asked to opine on four questions:

a) Based on the review of the attached information and any communications you may have with Dr. Hamid, are you able to comment on the reasonableness of the diagnosis as opined by Dr. Hamid?

b) Assuming the diagnosis as opined by Dr. Hamid is correct, is the treatment Mr. Torske is receiving reasonable?

c) Is Dr. Hamid's conclusion regarding the integrity issue as set out on page 1 of his February 3, 2014, letter reasonable? If not, please provide your opinion in this regard.

d) Is Dr. Hamid's conclusion regarding Mr. Torske's fitness to work reasonable given the parameters set out in the proposed terms and conditions of employment?

108. In light of our conclusion that our jurisdiction is limited as set out above, the fourth question does not concern us. Our role is to determine sanction. Whether Mr. Torske is now fit to return to work is a concern of those responsible for reinstatement. That said, evidence of his fitness to practice was very helpful to us and was necessary when choosing between disbarment and suspension.

109. Dr. Salim Hamid is Mr. Torske's treating psychiatrist. He testified at the hearing. Prior to the hearing, he had provided three letters to the Law Society. It was on those letters (Exhibit 35) that Dr. Els was asked to opine. In a letter dated October 7, 2013, to Practice Review, he confirmed that Mr. Torske had been suffering from Bipolar II disorder and Substance Dependence disorder.

110. In answer to the first question, Dr. Els confirmed the diagnoses of Dr. Hamid.

111. Dr. George P. Duska was qualified by Mr. Torske to provide independent expert opinion evidence on issues of psychiatry and addiction. He conducted an assessment of Mr. Torske and prepared an Independent Medical Examination dated October 16, 2014 (Exhibit 39). In his evidence, Dr. Duska also confirmed the diagnoses of Dr. Hamid regarding Bipolar II disorder and what Dr. Duska called Polysubstance abuse.

112. As to the second question regarding the reasonableness of the treatment program being received by Mr. Torske, Dr. Els readily agreed with the treatment being provided for his Bipolar II disorder. Dr. Els also agreed with the treatment for the Substance Dependence disorder, although he would have recommended a residential care program for the addictions issues at an earlier stage. Despite that, he concluded that the current outpatient relapse prevention plan appears reasonable and that the minimum standards for current addiction care have been met.

113. Further, he agreed that Mr. Torske appears to have reached "stable recovery", corroborated by a negative hair test for substances of abuse, which test was performed by Dr. Els personally.

114. On the latter subject, both Dr. Hamid and Dr. Duska agreed that Mr. Torske's addiction issues have reached what is now known in psychiatric science as "sustained remission". That, all three psychiatrists agreed, is very good.

115. The third question is where the psychiatrists diverge, the so-called "integrity" issue.

116. In his letter dated February 3, 2014 (Exhibit 35), Dr. Hamid responded to several questions asked of him by the Law Society. The question that initiated the debate on this issue, as written by Dr. Hamid in his letter, was this: "In your opinion, is Mr. Torske's conduct, such as forgery of prescription, indicative of integrity issue or was it done in response to addiction?" Dr. Hamid's answer was the following:

> "My answer to this question can be easily answered, by keeping two issues with Mr. Torske in mind. The primary issue Mr. Torske has is of addiction. It is a known fact that a drug addict could go a very long way to procure drugs. In my opinion it is the addiction issue not a character flaw in my patient."

> David also suffers from bipolar disorder, which is also characterized by impulsive behaviour.
>
> I'm not aware that David was suffering from an acute psychotic episode at that point when he tried to forge prescriptions."

117. Dr. Hamid was given a choice regarding the cause of "Mr. Torske's conduct": was it indicative of an integrity issue or was it "in response to" addiction? Dr. Hamid's answer was to choose the latter of the two, but, in doing so, he appears to have interpreted the causation question as it concerned integrity as asking whether Mr. Torske's conduct was caused by a "character flaw". As between the two, he was certain that the answer was that the conduct was caused by the addiction, and he confirmed that during his oral testimony, with no equivocation and no qualification. He has no doubt about causation.

118. Dr. Els approached the subject differently. First, he defined integrity, setting out two definitions:

    a) The quality of being honest and having strong moral principles. *Oxford Dictionary*

    b) Integrity is a personal choice, an uncompromising and predictably consistent comment to honour moral, ethical, spiritual and artistic values and principles. Barbara Killinger, in *Integrity: Doing the Right Thing for the Right Reason*, McGill-Queen's University Press, 2010.

119. He then qualified his opinion by stating that, although "integrity can be defined and cognitively understood, measurement of the degree of integrity displayed is not primarily a medically answerable question", but he did offer that he could "rule out other possible explanations for conduct", and he offered the following conclusion:

    > In the absence of satisfactory alternative explanations to plausibly and likely explain the forging of prescriptions, the most likely explanation for exhibiting certain behavior defaults to volitional behaviour, and by implication questions personal choices and the commitment to a set of moral and ethical values, i.e., integrity.

120. Dr. Els explained how he had come to that opinion and set out the matters he considered. He took note of the Law Society's *Code of Conduct* and noted that various aspects of Mr. Torske's conduct represented a "substantial deviation" from conduct expected under the Code.

121. He then stated that the medical evidence supported the presence of three of the key known factors that might explain conduct: 1) addiction; 2) a major mood disorder, being Bipolar II disorder; and 3) the presence of maladaptive personality features. He stated that to apportion the relative contribution of a variety of factors in explaining conduct he adopted a common sense approach and proceeded to describe his views on each those

three factors, stating that each “may have” influenced Mr. Torske’s conduct “to varying degrees”.

122. Addiction, as defined by recognized societies of addiction medicine, is a primary, chronic, relapsing brain disease, affecting the reward pathways of the brain, as well as motivation, memory and related circuitry. Dysfunction in the related circuitry of the brain leads to distinctive biological, psychological, social and spiritual manifestations. This results in the person continuing to use substances despite harm, i.e., to pathologically seek reward and/or relief with the use of substances.

123. Dr. Els opined that: “as a general statement, addiction may plausibly, and to some degree, influence conduct.” However, he said, the “desire, urges, and cravings associated” with the substances to which Mr. Torske is addicted, cocaine and opioids (narcotic painkillers), should not be viewed as “an obligation to use”. Further, he opined that suffering from addiction does not make substance use obligatory. Dr. Els is very strong on the conclusion that substance abuse, as well as procurement of the substances, forging prescriptions, working while not in a state to do so, and failing to self-report to a regulatory body, “remain under volitional control of the individual”.

124. Dr. Els did not say that it is a free choice, an easy choice, or a hard choice. His opinion was as set out above, that is, that it is a choice.

125. Regarding the causative influence of addiction, Dr. Els used a double negative, stating “Self-destructive behavior, including substance abuse, is not necessarily involuntary”. Thus, while he said that the choice remains “under the volitional control” of the addict, he did not say it is voluntary, only that it is not necessarily involuntary. In his opinion it appears that substance abuse is the result of a kind of volitional cost-benefit analysis. He said that, “under certain circumstances, the immediate cost of discontinuing substance use is greater than the immediate benefit of quitting, and hence substance use (and procurement of such) continues.” It appears that, for Dr. Els, whether a person such as Mr. Torske uses a substance or forges a prescription to procure a substance is a choice each time, the result of a volitional cost-benefit analysis.

126. Next, Dr. Els stated that criminal behaviour is not a defined part of addiction in accordance with the standards understood. He explained that not all persons with addictions forge prescriptions, and that the defined psychiatric category does not feature criminal behaviour. Instead, he stated that that psychiatric category describes a person suffering from Substance Use disorder as having “diminished control” over his or her behaviour, but that such a person is not “unable to control” his or her behaviour at a particular time. Dr. Els added that conduct associated with addiction may include criminal behaviour and unprofessional conduct. He was very clear that “associated with” does not imply “direct causation”.

127. What we learn from that series of statements and conclusions is that Dr. Els's view of causation is very strict. It appears to us that he would find direct causation only if the diagnosis also included not just diminished capacity to choose but full incapacity, that the addiction be such that the person is "unable to control" his or her behaviour. Causation, for Dr. Els, appears thus to be a kind of determinism. His understanding of causation appears to eliminate notions of foreseeability or reasonable foreseeability and only finds causation when a certain behaviour is the inevitable result of a diagnosed disorder.

128. In fairness to Dr. Els, he does not lay out his final conclusion on the causal impact of addiction as starkly as that, for his eventual conclusion is that "it cannot be said that the addiction is a predominant causal contributor to Mr. Torske's conduct." That final conclusion, however, appears to be an understatement by him; the deterministic nature of his understanding of causation is a theme, and it is that deterministic notion of causation that the Law Society relies upon to assert its position on integrity.

129. One of the things that is striking about Dr. Els's description of the causal impact of the addiction factor is that, through it, he did not speak specifically of Mr. Torske's addiction, about any of its manifestations or its specific characteristics, as the addiction affects him. Instead, Dr. Els spoke about addiction generally, used definitions, and applied what are likely statistically-generated affirmations from the literature. It may be that he was unable to speak specifically to the causal impact of Mr. Torske's particular addiction, and that is fine, of course. However, when we compare his analysis of the addiction factor to that of the "mood disorder" factor, the analysis shifts markedly.

130. The entire one-paragraph analysis of the causal effect of Mr. Torske's mood disorder on his criminal conduct is based upon Mr. Torske's specific situation, on evidence provided by Mr. Torske himself to Dr. Els as well as by reference to others in Mr. Torske's workplace. The analysis is in effect that, throughout the period of the forged prescriptions, Mr. Torske both suffered from Bipolar II disorder and functioned at a reasonably high level at work. Consequently, Dr. Els seemed to conclude that Mr. Torske's criminal behaviour was not influenced by the mood disorder.

131. The result of that comparison for us is that we view his opinion on causation and volition as being more theoretical than applied and therefore less helpful and likely less accurate and less correct than it appears, when applied specifically to Mr. Torske. As explained further below, we therefore prefer the approach of Dr. Duska.

132. Dr. Els found what he believes the predominant cause to be in what he describes as Mr. Torske's "maladaptive personality features". In his Independent Psychiatric Evaluation, Dr. Els said the following:

> Maladaptive Personality features: Mr. Torske displayed traits consistent with an antisocial personality structure and the likelihood of an earlier Conduct Disorder. . . . Features of [Antisocial Personality Disorder] include a pervasive pattern of disregard for and violation of the rights of others, along with a failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest. It also includes deceitfulness, impulsivity, irritability and aggressiveness in some persons. Finally there may a (*sic*) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. On balance of probabilities, even with addiction and a mood disorder present, personality features are strong determinants of behavior and more likely to inform illegal behavior as opposed to the impact of the mental disorders informing conduct in Mr. Torske's case.

133. Having thus set out the three potential causal factors, albeit having discounted the first and essentially eliminated the second, as described above, while asserting that the third was causally much more important than the other two, he then laid out a discussion with the objective of coming to an answer to the third question asked by the Law Society, that is, to the integrity question.

134. Dr Els posited that Mr. Torske's behaviour was goal-directed and volitional, concluded that it was likely that Mr. Torske knew that what he was doing was wrong, and asserted that Mr. Torske, at the time he forged the prescriptions, had sufficient mental capacity to realize that what he was doing was wrong. He therefore concluded that, on a balance of probabilities this "discrepancy" [we understand that term to refer to knowing that what he was doing would cause him harm and doing it anyway] is "likely multifactorial in nature, with the personality features as the predominant factor informing conduct."

135. Dr. Els then made several statements to the effect that he has not been persuaded that the link between forgery and addiction is sufficiently close to say that the latter caused the former and that "the medical [*sic*] does not sufficiently establish a nexus or connection between Mr. Torske's conduct of forging prescriptions and his mental illness." He concluded that the misconduct was most likely attributable to maladaptive personality traits. He denied any "but for" causal connection, something that he again seemed to understand as involving inevitability and predetermination in its causal relationship. Finally, he disagreed with Dr. Hamid's opinion that the illegal conduct was predominantly caused by addiction.

136. Dr. Els's opinion is clear. His testimony regarding it was consistent, and it was not undermined on cross-examination. It remains his opinion, and we are left to draw our conclusions, in part, based upon it.

137. What is striking from the analysis Dr. Els did is that it matches very well the story Mr. Torske told us about the evening when he had his son on his knee and tried to choose

among suicide, buying street drugs, and forging prescriptions. From Mr. Torske's description of that one story, it is clear that he was volitional and goal-oriented, that he knew what he was doing was wrong and that it would have negative consequences (or he feared that it might), and that he did it anyway. He chose to commit the crime of forgery.

138. Dr. Els is correct: the addiction did not render Mr. Torske unable to control his behaviours. The addiction did not determine the choice, did not predominantly cause the forgery. Mr. Torske did that himself, volitionally. The difficulty for us is that, while Dr. Els may be correct, he may not be right. What we mean by that is that, while Dr. Els has correctly described the decision tree and the volitional process that resulted in the choice to forge, he may not be right about causation, for the question that remains is the common sense one asked by Mr. Torske's counsel, which is whether the addiction informs the causation analysis sufficiently to help us understand why Mr. Torske ended up in that situation in the first place, with a prescription pad in his hand, forging prescriptions.

The Evidence of Mr. Torske

139. Mr. Torske testified. He also called Mr. Foster, Dr. Hamid, and Dr. Duska to testify before us.

140. The evidence of each of these witnesses, including Mr. Torske, was forthright and honest. As was the case for Dr. Els, who we saw as being very forthright and very honest, we did not have any issues regarding the credibility of any of Mr. Torske's witnesses. All of them seemed to understand clearly that telling the truth and giving their honest evidence was what would help us most. We believe that all of them did so.

141. In an effective cross-examination, counsel for the Law Society put to each of the witnesses various matters, incidences, statements, and facts that were designed to create doubt about Mr. Torske's evidence, his history, his mental state, his recovery, and his integrity. We do not think that she succeeded. The psychiatric evidence of Dr. Hamid remained uncontroverted. The expert opinion of Dr. Duska remained intact – as an independent expert he appeared honestly to opine that none of the facts put to him that seemed to differ from the factual recitation set out in his report affected his conclusions or changed his views.

142. The evidence given by Mr. Torske, by Dr. Hamid, and, to a much more limited extent, by Mr. Foster, supported the conclusions of Dr. Duska. Having considered all of the evidence, we unanimously agreed with Dr. Duska's opinion on all of the issues before us.

143. The following recitation of pertinent facts is taken primarily from the report of Dr. Duska, most of which was confirmed by either Mr. Torske or Dr. Hamid, and much of it was agreed to by Dr. Els. Where significant differences or difficulties arise, we discuss them, although many have already been discussed above in our analysis of the evidence of Dr. Els.

144. In June of 2008, Mr. Torske tore his medial collateral ligament and meniscus in his knee. He initially consulted with his family doctor and was referred to an orthopedic surgeon. In the 14 months he waited to be seen by the surgeon, his pain was managed with the opioid Oxycontin.

145. As Judge Spence said in *R v Torske*, PC, Mr. Torske was “addicted to prescription drugs for many years, which addiction commenced by no fault of his own”. Dr. Duska describes his addiction as iatrogenic, that is, caused by doctors, introduced by doctors, or doctor-induced.

146. From that time, Dr. Duska opined, and we agree, Mr. Torske’s problems were a cascade of events that followed from a knee injury. Dr. Duska set out the cascade of events, rendering plain his view of the causative role of the iatrogenic addiction, as follows:

> As often is the resourcing within Alberta Health Services, Mr. Torske had a prolonged period of wait prior to seeing an orthopaedic for surgical correction to a mechanical tear in his knee. In my opinion it was over this period of time that Mr. Torske developed an iatrogenic addiction to opioids as his pain was managed in the community. In my opinion **if it was not for** his knee injury he would not have developed an opioid dependency and addiction. Further**, if it was not for** him being stabbed at his home he would have not returned to opioid use for the psychological relief that he was aware that opioids could provide. Further **if it was not for** his opioid abuse he would have not been treated with the medication Naltraxone which likely contributed to a drug induced psychosis. **If it was not for** the drug induced psychosis he would have not threatened his wife and been forced to move into the community due to a restraining order. Following living in the community **if it was not for** his despair and situation it is unlikely that he would have commenced the use of cocaine to address his depression. [**our emphasis**]
>
> In my opinion Mr. Torske’s pattern of behaviour does not reflect a characterological defect but rather is consistent with drug seeking behaviour that is often common with persons who are dealing with an Acute Polysubstance Abuse Disorder. In Mr. Torske’s favour, over the course of these difficulties, he sought appropriate treatment and made efforts to address his addictions at many phases of his difficulties. In my opinion this reflects a pro social personality construct which was challenged by an overlying addiction.

147. At another point in his report, Dr. Duska opines as follows:

> In my opinion Mr. Torske's criminal behaviour, in regards to his opioid use, is a reflection of the physiological and psychological dependency he had on these medications. In my opinion his initial difficulties with this medication were iatrogenic to the treatment he was receiving from his medical practitioners. Further it is the abrupt withdrawal of these medications that likely intensified his cravings and withdrawal to these opioids.

148. Dr. Hamid first met with Mr. Torske on November 5, 2012. That day, for the first time, Mr. Torske was properly diagnosed with Bipolar II disorder and thereafter treated for it. Until that time, he had been misdiagnosed and his Bipolar II disorder had been missed, meaning that the treatment he had been receiving had been ineffective.

149. Dr. Duska's causal cascade is simplistic. It reads simplistically, and it sounds almost too simple to be true. It is clear that Dr. Els thought it was too simplistic by far, and he thinks it is incorrect.

150. We agree with Dr. Duska.

151. We do not agree with him with respect to the simplicity of the causation analysis, which over-emphasizes notions of "but-for" causation. We agree with him because the cascade of events approach best fits with Mr. Torske's before and after story, as demonstrated in the remainder of the evidence. While the events occurred over an extended period of time, they appear to us to be anachronistic in the sense of being inconsistent with his character, before and after, inconsistent with what we believe to be his inherent integrity.

152. Prior to his addiction, Mr. Torske had the kind of success, educationally, socially, and physically (in sports) that is typical, or certainly not atypical of most members of the bar, most persons of sufficient good character to be admitted to the practice of law in Alberta.

153. Afterwards, particularly according to the evidence of Mr. Foster, but also according to the evidence of his treating psychiatrist, and more or less, according to each of the experts, his behaviour has returned to that typical, or at least not atypical, of most members of the bar in Alberta. He has had some negative events, and he could be criticized for those – and has been in these proceedings – but he is still recovering, still learning to deal with the issues created by the iatrogenic addiction, that is, by the addiction issues that were not his fault but that are now his burden to bear, into perpetuity.

154. Prior to the addiction, Mr. Torske used illegal drugs, such as cannabis and cocaine. At one point, during a Law Society investigative interview, he even described himself as having been addicted to cocaine. Further, as a youth, he was convicted of a crime and subsequently pardoned for it. Dr. Els thought those facts extremely important to an

assessment of Mr. Torske's character. Dr. Duska did not think that knowing them changed his opinion at all. We think that the reason for that is that those events, to us, do not demonstrate the flaws of a tragic character without integrity. To us, those events are equally well explained as being anachronistic, in the sense of being the errors of youth or of immaturity, and not emblematic of a man without integrity.

155. Since his mental disorder was properly diagnosed (and correctly, as all the psychiatrists agree), and since he has received proper treatment for it, Mr. Torske has, also with treatment, support, and regular testing (he has never had a positive test for any forbidden substance in many, many random drug tests), also managed, volitionally, to bring his addiction issues under control. We have been unanimously advised that he will always, into perpetuity, be at risk as a result of his iatrogenic addiction and that is very unfortunate for him. But, as Judge Spence said, and as Dr. Duska confirmed, that permanent state of risk related to addiction to opioids is not his fault. It is not, as Dr. Hamid and Dr. Duska opined, a character flaw demonstrative of an absence of integrity. We agree.

156. In sum, we agree that the acts and conduct that brought Mr. Torske before us were acts that lack integrity and are acts that, in other circumstances, would result in disbarment. Under the influence of untreated Substance Abuse disorder and untreated Bipolar II disorder, Mr. Torske acted without the integrity expected of a member of good character and of member in good standing of the Law Society of Alberta. Treated for both, he does not so act. As we have tried to make clear at various points in this report, we are therefore not persuaded that the integrity issue is a fundamental one, that is, that it is so deleterious that Mr. Torske cannot be rehabilitated.

157. That said, and as we have also tried to make clear at various places through this report, the conduct at issue was very serious, almost aberrant for a member of the Law Society. It must be denounced in the most serious of terms, and we do denounce it.

158. The Court of Appeal has also denounced it, and dealt with matters of specific and general deterrence by way of the 9-month sentence imposed upon him for an indictable offence that will permanently stain his record.

159. In arriving at our sanction for his guilt on citations 1 and 2, our focus is on the matters raised in Section 49 of the *Legal Profession Act*: the protection of the public and the preservation of the standing of the profession in the eyes of the public whom we serve.

160. The evidence was clear that there is an ongoing need to protect the public from Mr. Torske. In addition to the evidence of all three psychiatrists that Mr. Torske's addiction issues may well last into perpetuity and may well require treatment and supervision into perpetuity, we were also presented with troubling post-treatment evidence. Although he was found by the experts to be in sustained remission, there have been examples at the

Roadlawyers of negative, potentially harmful conduct, involving breaches of undertakings given by him to the Law Society and potentially harmful to his ability to maintain volitional control of his addiction issues. Such events are not to be taken lightly or dismissed as atypical aberrations; we take them to be signs of ongoing risk. It may be that episodes like those will forever plague Mr. Torske. We do not know that. Time will tell, and, we think, more time is what Mr. Torske needs.

161. On the basis of all the evidence we heard in that regard, from all three psychiatrists, we have decided that, in furtherance of the purposes set out in section 49 of the Act, the appropriate sanction for Mr. Torske's guilt under citations 1 and 2 is a further suspension of 18 months, to begin from the date of this report, that is, July 8, 2015.

162. The Section 108 Resolution of the Benchers will remain in full force and effect (see paragraph 4). Any future variation, amendment, or termination of that Resolution will be determined in accordance with that Resolution; we do not purport to alter it in any way. Such, we think, was the wish of both parties in the event we decided to suspend Mr. Torske rather than disbar him.

163. As a condition of any future reinstatement at the expiry of the 18-month suspension, Mr. Torske must pay actual costs of the hearing and the investigation, in amounts to be agreed by counsel. If counsel cannot agree, they may approach the Hearing Committee or, in the alternative, if they are agreed, the Chair of the Hearing Committee.

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

165. If either counsel is of the view that issues related to the public availability of Exhibits and related to publication should be dealt with other than in the ordinary course by the Law Society, then we welcome written submissions on either or both of those issues within 30 days of delivery of the signed version of this report to counsel. Otherwise, we believe that each should be dealt with in the ordinary course.

166. Finally, we wish to thank all of the participants in this hearing. Both counsel served their clients tremendously, and both should be proud of the work they did. Certainly, we are extremely grateful for the professionalism and expertise with which the issues were presented and handled throughout. We are similarly grateful to the witnesses, all of whom were forthright and honest and who assisted us enormously in doing our duty here.

Dated at Calgary, Alberta, the 8th day of July, 2015.

W. E. Brett Code, Q.C.
(Chair)

Anthony G. Young, Q.C.

Glen Buick, B.A.

Schedules are not included but are available from the Law Society of Alberta by request.