THE LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT

IN THE MATTER OF THE LEGAL PROFESSION ACT,

AND THE MATTER OF A HEARING

REGARDING THE CONDUCT OF PETER D. RICCIONI

A MEMBER OF THE LAW SOCIETY OF ALBERTA

SANCTION PHASE REPORT

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I. INTRODUCTION

This matter was heard by a Hearing Committee of the Law Society of Alberta in relation to the Member, Peter Riccioni, who faced 20 citations.

The Hearing Committee found sufficient evidence on the balance of probabilities that that the Member had engaged in conduct deserving of sanction in relation to Citations 1,3,14,4,13,5,12,15,6,8,19,9,2,10, and 16.

On May 10, 2012 counsel for the member called a number of character witnesses on behalf of the Member: K. K., E. T., M. M., R. B., A. C., C. J. and the Member, Peter Riccioni.

The non-expert witnesses were called to give perspective on various aspects of the Member's personal and professional life.

In addition, a forensic psychological assessment of the Member by Dr. J. Thomas Dalby dated May 6, 2012 was admitted as Exhibit F- 22. Dr. Dalby indicated that the Member presented with untreated Attention Deficit Hyperactivity Disorder. He is of average intelligence but with a variety of attentional and memory difficulties. He also shows specific difficulties in reading. He can be treated with medication and cognitive-behavior therapy.

The report of Dr. Dalby was provided in order to identify the cause of Mr. Riccioni's apparent difficulties in answering questions, and to identify possible remedies in order to assist the Hearing Committee in relation to the issue of whether or not the Member is governable.

The Hearing Committee considered submissions from counsel regarding sanctions and costs on May 10, 2012. Counsel for the Member made the point that he was unable to make a full response to certain concerns without seeing the Hearing Committee's written decision and the proceedings were adjourned to November 26, 2012 in order for written reasons to issue and for counsel to review same before completing submissions as to sanction.

The Hearing Committee considered further submissions from counsel regarding sanctions and costs on November 26, 2012 after written reasons issued.

The Hearing Committee gave its order with respect to sanctions and costs on January 11, 2013.

These are the written reasons for imposing the sanctions and costs.

II. SANCTIONS AND COSTS REQUESTED BY THE LAW SOCIETY

The Law Society seeks disbarment of the Member and Costs.

To complete the exhibit record, the following Exhibits were marked and entered:

The Estimated Statement of Costs was entered as Exhibit F-23 in the amount of $41,449.59.

The Member's Disciplinary Record dated was entered as Exhibit F-24. The Member has no record.

III. LAW SOCIETY SUBMISSIONS ON SANCTION

Counsel for the Law Society argued that it was apparent from the report of Dr. Dalby that the Member had not been fully candid with Dr. Dalby and that there was nothing in the report or in the Member's testimony to give assurance that there would be no reoccurrence of the offenses.

Counsel for the Law Society argued that there was no basis on which this Hearing Committee could find that the Member was at very low risk of finding himself in similar circumstances or behaving as he did during the events under consideration at this hearing.

Counsel for the Law Society submitted that the Member's behaviour was egregious, in that he had given away trust cheques to be signed by a third person and had lied about this to the investigators and to Law Society disciplinary staff. Counsel for the Law Society argued that the Member's failure to be candid occurred time after time, as did other of his sanctionable activities.

The Law Society of Alberta submitted that there were elements of un-governability in this case, and argued that in order to excuse conduct because of a medical reason, one would need to be assured that if the medical condition had not arisen, the conduct would not have occurred, and that by correcting the medical condition there would be no risk of re-offence, and there is no assurance in this situation. Counsel for the Law Society provided the following case law:

- Adams v. Law Society of Alberta [2000] AB.C.A. 240
- The Law Society of Alberta Hearing Committee Report, In the Matter of the Legal Profession Act and In the Matter of a Hearing Regarding the conduct of Clarence Ewasiuk, A Member of the Law Society of Alberta, Sanction Phase Report dated March 12, 2012.

IV. MEMBER'S SUBMISSIONS ON SANCTION

Counsel for the Member submitted that a suspension was in order and that a life coach might be a solution as well as a lifetime ban on the Member practicing real estate, or alternatively, a requirement that the Member practice with others as he has been a sole practitioner throughout his career.

Counsel for the Member submitted that the public would be protected and the standing of the legal profession would be upheld if the Member were not allowed to practice real estate law again and if he were suspended and not reinstated by the Law Society of Alberta until he received a clean bill of health. Counsel suggested that if the Hearing Committee could find that on the balance of probabilities, the Member did not intend to mislead, that it would not be appropriate to permanently take away his entitlement to practice law and the better decision would be to put conditions on his practice, recognizing a good prospect of sufficient recovery, but not permitting the Member to continue practice until the Law Society is satisfied that he is sufficiently functional.

Member's counsel asked the Hearing Committee to consider that the persons involved in lender/buyer transactions were complicit in their own loss.

With respect to The Law Society's frustrations with Mr. Riccioni's responses, counsel for the Member submitted that his client had not intentionally intended to be deceptive, but rather the Member's responses were consistent with his tendency to create confusion in the way he answers questions due to his difficulties in attention and memory, so much so that he sometimes apparently even confuses himself.

Counsel for the Member argued that the word "*candor"* can mean dishonesty, but does not have to mean dishonesty and that the character witnesses had spoken of the Member's attention issues, which was also apparent from the Member's evidence and Dr. Dalby's report.

Counsel for the Member suggested that another synonym for *"candor"* was being "*straight-forward"* and that although the Member had not been straight-forward in his responses; it did not mean that he was dishonest.

Counsel for the Member argued that the Member's unsatisfactory responses to the Law Society were a product of his below-average reading and sentence composition ability and that what the Member said to the Law Society at times was not what he was intending to express. Furthermore, counsel submitted that, due to his diagnosis, the Member when on the witness stand being asked questions, faced disadvantage.

Counsel for the Member argued that the diagnosis supports the fact that the Member thinks in concrete terms rather than abstract and takes a black-and-white interpretation of matters which would explain in part his inability, at times, to properly identify who his clients were on the problematic real estate transactions.

Having reviewed the reasons of the Hearing Committee, counsel for the Member argued that although the Hearing Committee had found lack of candor on the Member's part that it was necessary to consider what motive might underlie the lack of candor. In the Member's case, that lack of candor is possibly causally related to the Attention Deficit Hyperactivity Disorder diagnosis of Dr. Dalby. Counsel for the Member submitted that the Hearing Committee needed to consider the level of intent on the part of the Member and whether he intended to deceive by lying about trust cheques he did not sign.

Counsel for the Member argued that the Law Society had not alleged fraud on the part of the Member.

With respect to the issue of whether the Member had been willfully blind to a fraud scheme, counsel for the Member indicated that in his belief willful blindness could be the requisite *mens rea* for a fraud and required the accused to really know what was going on but deliberately not formally confront or ask the questions. Counsel for the Member submitted that for there to be willful blindness the Hearing Committee would have to find that the Member participated in the fraud, which the Hearing Committee had not done, nor had it been asked to do.

With respect to the findings that the Member had failed to be candid about the trust cheques, counsel for the Member indicated that there was no express finding that the Member had lied about the trust cheques. There were no findings of full intent for misconduct or of any intentional deception or lying. Furthermore, that the Member had indicated in his evidence that he had developed a broader view of who his clients were and what his broader obligations to lenders might be. The Member has no previous record and there was no evidence that he had breached the undertakings he had made to the Law Society earlier in these proceedings.

Counsel for the Member submitted the Mr. Riccioni had been responsive to the Law Society in that he had responded to inquiries in a timely fashion.

Counsel for the Member submitted that there was no evidence that the Member had benefitted financially from the scheme.

Counsel for the Member reviewed the evidence of the Member's character witnesses and the Member's own evidence that he was undergoing cognitive therapy and was on medications since May, 2012 as per the recommendations of Dr. Dalby.

Counsel for the Member characterized disbarment as an extreme measure that ought to be imposed only in a circumstance where protection of the public can be achieved through such remedy and that if the concerns and the risk can be sufficiently managed otherwise through less harsh measures, then that should be the option. Counsel submitted that there are plausible connections between the Member's Attention Deficit Hyperactivity Disorder and the Member's mental state associated with his misconduct.

There is no historical basis for accepting that if the Member continues with treatment and medication he will get into further difficulties.

Counsel for the Member provided the Hearing Committee with several cases in which Law Society Hearing Committees had reprimanded or suspended a Member.

Counsel for the Member provided the following case law:

- The Law Society of Alberta Hearing Committee Report, In the Matter of the Legal Profession Act and In the Matter of a Hearing Regarding the conduct of Dana Carlson, A Member of the Law Society of Alberta, dated April 10, 2012.

- The Law Society of Alberta Hearing Committee Report, In the Matter of the Legal Profession Act and In the Matter of a Hearing Regarding the conduct of Stephen G. Heinz, A Member of the Law Society of Alberta, dated September 25, 2012.

- The Law Society of Alberta Hearing Committee Report, In the Matter of the Legal Profession Act and In the Matter of a Hearing Regarding the conduct of Murray Engelking, dated August 20, 2009.

- The Law Society of Alberta Hearing Committee Report, In the Matter of the Legal Profession Act and In the Matter of a Hearing Regarding the conduct of Darrell Elgert, dated August 7, 2012.

V. REBUTTAL OF THE LAW SOCIETY

Counsel for the Law Society submitted that in a criminal law context, recklessness meant a person who sees risk and takes the chance. Willful blindness goes beyond that and arises when a person becomes aware of the need for some inquiry but declines to make that inquiry because the person does not wish to know the truth. That is a step up from recklessness. Both can be the foundation for the finding of fraud in criminal law. However, counsel for the Law Society submitted that this was not a criminal law case: it was an administrative law case where the member had not been charged with fraud but with conduct deserving sanction.

Counsel for the Law Society submitted that the Hearing Committee in its written reasons had made findings of recklessness and willful blindness and that these were aggravating factors and go to the intent with which Mr. Riccioni carried out these offences and are properly to be considered in the sanction decision.

Counsel for the Law Society submitted that Dr. Dalby's report was of no assistance to the Hearing Committee and the opinion as to the potential for improvement by the Member using medication and behavioural intervention was not definitive.

Counsel for the Law Society also submitted that a suspension and limits to the Member's practice and psychological treatment do not address the issue of the

Member's integrity. The Member is ungovernable and no conditions can be fashioned that protect the public.

VI. STATEMENT OF THE MEMBER

Following argument on November 26, 2012, the Member volunteered to make a further statement to the Hearing Committee and was sworn in again.

In his statement the Member indicated the following:

1) He accepted the findings and took responsibility;
2) He was mistaken about the cheques and he honestly believed they were his signatures all along. He was in denial and must have been mistaken about that;
3) The Member was sorry his clients suffered the losses they gave evidence about;
4) It was not until the clients gave evidence of the scheme that the Member heard about it from them;
5) Nobody had ever told him previously about this real estate scheme. The clients had done it on their own before engaging him as their lawyer and deceived bank managers;
6) The Member believed he was a little sloppy with his practice;
7) He would like to think that if he had met with those five clients he would have figured out the scheme and stopped it;
8) These five clients were a small percentage of the hundreds of real estate files and clients he served and provided with very satisfactory services;
9) The Member was shocked by the evidence of the five clients and how they understood that what they were doing was wrong. He took instructions and fulfilled his clients' requirements to complete the sales;
10) The Member has learned to ask more questions of clients and get to know his clients.
11) He took responsibility for not meeting with the five clients who gave evidence at this hearing;
12) He currently delegates and will in future delegate few other than clerical matters to support staff;
13) He will notify lenders of red flags that may come up with interviews with clients.

At page 1760 of the Hearing Transcript, the following exchange occurred between the Member and counsel for The Law Society:

"MR. MACDONALD: And you would – it's your evidence, then, that of 185 trust cheques, you only signed 22; you're accepting that now, are you?

A. No, I – I'm not accepting that it was 22. I'm – I'm – I – I believe I signed – I still believe I signed all those cheques, but I must have been mistaken because we have a highly qualified trained handwriting expert that claims that I didn't sign the majority of them. And I was – I wasn't – I – I – I've been in denial because I – I know I sign my cheques.

MR. MACDONALD: So is you're checking – you're signing the cheques, and then if I have your evidence correctly, there is no way you could only sign 22 and think you'd signed 185?

MR. RICCIONI: That's correct.

MR. MACONALD: And that's because that wouldn't make sense, would it?

MR. RICCIONI: That's correct."

VII. ANALYSIS AND SANCTIONS IMPOSED

A. The Law on Sanctions

The Legal Profession Act, s. 72(1) requires a Hearing Committee, on finding a Member guilty of conduct deserving sanction, to disbar, suspend, or reprimand the Member.

The primary purpose of disciplinary proceedings is: (1) the protection of the best interests of the public (including the Members of the Society) and (2) protecting the standing of the legal profession generally: Law Society of Alberta v. Mackie 2010 ABLS at para.10. That is the reference point for this Hearing Committee.

Although the order of a Hearing Committee may seem harsh, that is not the goal. In most cases the order of sanction is primarily directed to one or other or both of the following purposes:

One purpose is to be sure that the offender does not have the opportunity to repeat the offence which can be achieved either by a suspension or disbarment.

The second purpose is to maintain the reputation of the legal profession:

"To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires." Bolton v. Law Society, [1994] 2 All ER 486 at para. 492 (C.A.)

The Law Society regulates in the public interest:

"The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practise his profession." McKee v. College of Psychologists, etc., [1994] 9 W.W.R. 374 at 376 (B.C.C.A.)

The privilege of self-governance is accompanied by certain responsibilities and obligations. The impact of any misconduct on the individual and generally on the profession must be taken into account:

"*This public dimension is of critical significance to the mandate of professional disciplinary bodies." "The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing*": Adams v. The Law Society of Alberta, [2000] A.J. No.1031 (Alta. C.A.)

The sanctioning process should involve a purposeful approach. Sections 60 and 61 of the Hearing Guide set out the general and specific factors that this Hearing Committee must consider in determining what sanction to impose. Factors which relate most closely to the fundamental purposes outlined above will be weighed more heavily than other factors. The final sanction must be one which is consistent with the fundamental purpose of the sanction process.

The Hearing Committee has considered the following general factors:

a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.

b) Specific deterrence of the Member in further misconduct.

c) Incapacitation of the Member (through disbarment or suspension).

d) General deterrence of other members.

e) Denunciation of the conduct.

f) Rehabilitation of the Member.

g) Avoiding undue disparity with the sanctions imposed in other cases.

The Hearing Committee has also considered the following specific factors in this case:

a) The nature of the conduct:

(i) Does the conduct raise concerns about the protection of the public?

With respect to Citations 3 and 14 the Hearing Committee found that the Member failed to serve his clients, including A.D. and A. L., and that such conduct is conduct deserving of sanction.

The Member's conduct does raise concerns about the protection of the public.

The Hearing Committee found that the Member negligently and irresponsibly created a situation where his clients and his transactions could not be clearly separated out from those which were solely Ms Ridley's. The individual clients were members of the public who were negatively impacted by the Member's actions. In this case, a few minutes spent by the Member with his clients would quickly and clearly have shown that something was amiss. But the Member did not care to spend that time with his clients, nor see any need.

It is also the case that by the Member, a lawyer, lending his name to a skip transfer profit scheme some clients may have assumed legitimacy to it.

With respect to Citations 4 and 13: "Failure to serve lender clients" the Hearing Committee found that the Member failed to serve his clients, the Mortgage Lenders, and that such conduct is conduct deserving of sanction. Lenders are also members of the public.

While the Member has asserted that the Mortgage Lenders were "sophisticated" clients who knew or ought to have known that the value of the properties were increasing, this is no excuse for his absolute failure to perform the basic requirements of his retainer with lenders as set out in the documents outlining the lawyers' obligations which the Member signed. This also brings into question the Member's competence to practice law.

With respect to Citations 5, 12 and 15: "Improper delegation of duties" the Hearing Committee found that the Member improperly delegated his duties and responsibilities on real estate files and matters to D. R. Paralegal Services Ltd. and Debra Ridley and that such conduct is conduct deserving of sanction. This certainly impacted the public. As part of the abdication of his practice to Ms Ridley, the Member failed to perform the simplest and easiest tasks that are necessary for every lawyer to perform as proper file management. Again, this raises questions about the Member's competence.

(ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?

With respect to Citations 2, 10 and 16: "Weakening public respect for law, and the justice system, and engaging in conduct that brings discredit to profession", the Hearing Committee found that the Member acted in a manner that might weaken public respect for the law or justice system or in a manner that brings discredit to the profession and that such conduct is conduct deserving of sanction.

It brings the profession into disrepute when a lawyer treats his clients as products on an assembly line, fails to meet with them to ensure that proper instructions are received ensure that they understand the legal transaction they are participating in and fails to

ensure that the clients are well informed as to their legal rights and risks. That lawyers may use a paralegal on a supervised basis it is not an excuse for creating a process for clients that puts them at risk and permits fraudulent activities to occur.

It brings the legal profession into disrepute when a lawyer represents several parties on a transaction but chooses to prefer one client over others and take instructions from that client to the detriment of the other clients. It is even more egregious that it takes an entire Law Society Hearing for this Member to acknowledge and understand who his clients were and what duties he had to them. Competence to practice law is clearly not being demonstrated in any meaningful way by this Member.

It bring discredit to the profession when a lawyer delegates their practice to a paralegal and fails to supervise that person to such an extent that they are able to conduct various fraudulent activities under the Member's name. When a lawyer participates in fraudulent activities, the lawyer sends a message to the public that fraud or criminal activity are accepted pursuits in a community.

It brings the profession in disrepute when a Member fails to be candid with his regulator. Lawyers are a self-governing profession. In order to maintain this privilege, it is imperative that lawyers be completely candid with the Law Society when inquiries are made as to the nature of their practice and questions surrounding compliance with the governing legislation, Rules and Code of Professional Conduct.

That the Member permitted someone else to sign trust cheques on his behalf in order to facilitate an assembly line approach to the practice of law and engage in fraudulent endeavors is activity that weakens public respect for the law and brings discredit to the profession.

With respect to how the Member's activities weakened public respect for the justice system the Alberta Court of Appeal in Adams v. Law Society of Alberta **2000 ABCA 240**at paragraph 8 -10 states succinctly as follows: :

*"[8] Although arising in a different context, the Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in **Hill v. Church of Scientology of Toronto**, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130. At 1178, Cory J. said:*

> *The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.*

[9] Every member is or ought to be aware that not only one's professional conduct, but also one's personal conduct may be subject to scrutiny when that conduct may likely affect one's professional reputation, integrity and trustworthiness. The misconduct may or may not be criminal. Unlike criminal behaviour per se, the individual's misconduct may have a significant effect on the reputation of the legal profession generally.

[10] Historians may question the origin and the history of the oft-repeated statements about the honour and integrity of the legal profession, but it cannot be denied that the relationship of solicitor and client is founded on trust. That fundamental trust is precisely why persons can and do confidently bring their most intimate problems and all manner of matters great or small to their lawyers. That is an overarching trust that the profession and each member of the profession accepts. Indeed, it is the very foundation of the profession and governs the relationships and services that are rendered. While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal profession will be eroded by disreputable conduct of an individual lawyer."

(iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)

With respect to Citations 8 and 19: "Assisted clients in an improper purpose", the Hearing Committee found that the Member assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

The legal system cannot function properly if officers of the court assist clients in improper activities. The Alberta land titles system is part of the legal system. Lawyers of all persons know where the "loopholes" or "weak points" lie and for a lawyer to take advantage of their knowledge to undermine the lands titles system is absolutely impermissible. In this particular case, it is hard to determine whether Mr. Riccioni knew of the loopholes or whether he just allowed others to take advantage of them. In either case, it is clear that he clearly did not appreciate his duties as a lawyer sufficiently to advise his clients and he took no steps to do so.

(iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?

With respect to Citation 6: "Failing to be candid" the Hearing Committee found that the Member failed to be candid in his written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.

The Hearing Committee found that the Member permitted funds to be withdrawn from his trust account by one or more cheques which were not signed by him or by any active Member of the Law Society and that such conduct is conduct deserving of sanction.

If it was not made eminently clear in the written reasons previously, the Hearing Committee believes that the Member "lied" to the Law Society about the trust cheques. The Hearing Committee does not believe the Member cannot identify his own signature on cheques he signed and which he did not.

On November 26, 2012 the Member made a statement to the Hearing Committee that was intended to be an acknowledgment that he was taking responsibility for his actions and had accepted the decision of the Hearing Committee. It fell far short of that. The Member used language in his apologia that circumvented his taking full responsibility.

By 2005 the Member understood the concerns of the Law Society in relation to this issue and that the Law Society was seeking assurances from the Member that he had direct personal contact with his clients and that this was the case at the time and would continue to be the case in the future. The Member in his evidence prevaricated and parsed out the meaning of words in an effort to explain why he had not misled the Law Society in relation to this issue.

The legal profession is a self-governing profession in Alberta. It is incumbent upon Members to be completely honest and forthright with the Law Society when inquiries are made with respect to their legal practice. If a question is asked, it needs to be responded to directly, clearly and honestly and language used will be interpreted by the Law Society subject to its usual and standard meaning. This is a governance issue.

A lawyer must apply his or her legal training and analytical thinking to any situation. The Member has significant cognitive deficits and there is no evidence that medications and treatment will improve the situation to the point that it is a safe for the public for the Member to practice law. Furthermore, there are issues of integrity and governability that treatment cannot address adequately.

b) Level of intent: the appropriate sanction may vary depending on whether the member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain the public confidence in the legal profession may require a particular sanction regardless of the state of mind of the member at the time.

The Hearing Committee is of the opinion that the Member at various times was negligent, willfully blind, or reckless in his actions. The Member's defense of cognitive and communications limitations due to ADHD is not helpful. The evidence makes it clear that whatever his levels of intent might have been, the Member's limitations are such that he is incapable of practicing law with competence. But it is more than incompetence: this Member lacks integrity and is ungovernable.

c) Impact or injury caused by the conduct.

Clients went bankrupt, or plan to; they have lost their properties and any prospect of being home owners in future. They have applied family savings to try and save

themselves from the outcome of their involvement, and lenders have foreclosed. It is true that some of the clients were complicit in their own losses to a greater or lesser degree depending on the facts of their individual situations, but it is also true that a competent lawyer who met with those clients would have been able to discern what was occurring and dissuade them, and if not, decline to represent them. Furthermore, because a client was complicit does not mean that they could not have been counseled to avoid participation in a scheme had they met with a lawyer and been told it was wrong and the risks.

d) Potential injury, being the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

Lawyers and the Law Society are all aware of the potential impact and harm to the public, the legal system and the profession that was reasonably foreseeable at the time these schemes were being undertaken.

e) The number of incidents involved.

There were several.

f) The length of time involved.

This was not a once off situation but a course of action spanning several years.

g) Whether and to what extent there was a breach of trust.

The breach of trust was in the responsibility owed to both the LSA and the public to perform as a competent lawyer.

B. Integrity and Governability

The Hearing Committee has found that the Member was in many respects merely money making factory and absolved himself of any type of responsibility for the actions of Ms Ridley ostensibly done under his supervision. He abandoned his ethical obligations to his clients because he did not care enough to even find out who his clients were. He handed over his practice to someone else and took no responsibility for the consequences. These are all issues of integrity and honesty. There is no hope for rehabilitation in this case because the Member's answers in this matter under oath show that the Member really does not understand the serious nature of his actions. That goes to the issue of his competence to practice.

The Member's attempts at explaining to the Law Society whether or not he met with clients and the situation with the trust cheques demonstrate that the Member is not governable as he cannot be trusted to respond to his governing body promptly and with candor.

The Member may well be ungovernable in part as a result of his cognitive deficits and ADHD. There is no evidence to show that treatment will cure the Member's illness or make him governable. The Hearing Committee would be derelict in its duty to the public and to the profession not to disbar the Member. There is no other sanction that protects the public. There is nothing the Hearing Committee can do to save the Member from disbarment. It does not matter whether he was planful or has deficiencies that created opportunity: The Law Society cannot let the Member practice because it has to protect the public.

C. Special circumstances/Aggravating/Mitigating Factors

The Hearing \Committee has considered the following special circumstances (aggravating/mitigating) including the following:

a. Prior discipline record. The Member has no previous record.

b. Risk of recurrence. This is unknown.

c. Member's reaction to the discipline process (acknowledgement of wrongdoing, guilty plea, self-reporting, refusal to acknowledge wrongdoing, etc.) The Member admitted guilt to Citation 1.

d. Restitution made, if any. None at this time.

e. Length of time lawyer has been in practice. Member was admitted in 1997.

f. General character. The Member has persons in the legal community and in his personal life that are supportive of him.

g. Whether the conduct involved taking advantage of a vulnerable party. Yes, some of the clients were vulnerable persons.

h. A dishonest or selfish motive. Yes, the Member may not have profited, but he had wanted to.

i. Personal or emotional problems. No

j. Full and free disclosure to those involved in the complaint and hearing process or cooperative attitude toward proceedings. No.

k. Physical or mental disability or impairment. The Member has ADHD and since May 2012 has taken medications and therapy which may or may not assist him.

l. Delay in disciplinary proceedings. No.

m. Interim rehabilitation. The Member has complied with undertakings made on February 18, 2011.

n. Remorse. It was difficult to determine the Member's level of remorse and this is of concern to the Hearing Committee. The Member seems to appreciate that something has harmed others but not that he was the cause. He blames the clients and other participants still and attributes blame to his psychological condition but does not appreciate that his incompetence caused many people to be harmed or potentially harmed.

o. Remoteness of prior offences. Not applicable.

The Preface to the Code of Conduct, as it then was, states:

"The legal profession is largely self-governing and is therefore impressed with special responsibilities. For example, its rules and regulations must be cast in the public interest, and its members have an obligation to seek observance of those rules on an individual and collective basis."

Law Society of Manitoba v. Ward, [1996] L.S.D.D. No.119 at p.5:

"In our view, the right to practice law carries with it obligations to the Law Society and to its members. The minimum obligations in our view are, compliance with rules and communication with the Society as might reasonably be expected. Ward has persistently failed to comply with the rules and to communicate with the Society. This is all without any explanation or excuse of any kind whatsoever. The justification for self-government is at least partly based on the assumption that the Society will in fact govern its members and that members will accept governance. Ward has demonstrated through his behaviour that he does not accept governance."

Bolton v. Law Society, [1994] 1 W.L.R. 512 at 519 (C.A.); applied in Law Society of Upper Canada v. Jacobs, [1995] L.S.D.D. No.151 at p.18:

"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice

when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

Law Society of New Brunswick v. Michael A. Ryan [2003] 1 S.C.R. 247 at paragraph 59:

"There is nothing unreasonable about the Discipline Committee choosing to ban a member from practicing law when his conduct involved an egregious departure from the rules of professional ethics and had the effect of undermining public confidence in basic legal institutions. "

Clearly a reprimand is not under consideration in this case, where the Member has been found guilty of 15 very serious citations. The decision for the Hearing Committee rests between suspension with terms and disbarment. Having heard argument on sanction, reviewed the case law and given consideration to all of the general and specific factors above, and any special circumstances, the Hearing Committee has determined that the Member shall be disbarred.

VIII. FINDINGS AND CONCLUSIONS AS TO SANCTIONS AND COSTS.

The Hearing Committee orders that:

1. The Member be disbarred.

2. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.

3. A Notice to the Profession is directed.

4. The Member will pay the full costs of the hearing as per Exhibit F- 23 in the amount of $41,449.52.

DATED this 11th day of January, 2013 at the City of Calgary in the Province of Alberta.

Per: _____

SARAH KING D'SOUZA, Q.C.

Per: _____

NEENA AHLUWALIA , Q.C.

Per: _____

ANTHONY YOUNG, Q.C.