

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 MARK H. DEMONG
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

HEARING REPORT

A. QUORUM

The Hearing Committee commenced and continued throughout the hearing with three Benchers.

B. REPRESENTATION

The Law Society was represented by Lois J. MacLean (“LSA Counsel”). Mr. DeMong (“Member”) was represented by Ms. Laura Stevens, Q.C. (“Member’s Counsel”).

C. JURISDICTION

Letter of Appointment

Exhibit 1 establishes that a Panel comprised of Frederica Schutz, Q.C. (Chair), Robert Harvie, Q.C. and Larry Ohlhauser, MD was appointed to hear these proceedings.

LSA Counsel tendered Exhibits 1 through 4 and requested that the Hearing Committee accept its jurisdiction to determine the citations set out in the Notice to Solicitor.

Member’s Counsel indicated no objection to the composition of the Panel by reason of bias or for any other reason.

Notice to Solicitor

Exhibit 2, being the Notice to Solicitor, was tendered with acknowledgment of service endorsed thereon.

Notice to Attend

Exhibit 3 establishes that a Notice to Attend and Private Hearing Application Notice were issued.

Certificate of Standing

Exhibit 4 is the Member’s Certificate of Standing dated May 25, 2012, which certifies that on that date the Member was an inactive Member of the Law Society of Alberta.

Certificate of Exercise of Discretion

Exhibit 5 is a Certificate dated October 26, 2012 establishing that the Director, Lawyer Conduct exercised his discretion pursuant to Rule 96(2)(b) and determined that no one was to be served with a Private Hearing Application Notice.

The Hearing Committee accepts its jurisdiction to hear the matters in issue.

D. OPEN HEARING

The hearing was open to the public.

E. AGREED STATEMENT OF FACTS AND ADMISSION OF CONDUCT DESERVING OF SANCTION

Mr. DeMong's counsel tendered a document which, by agreement of Counsel, was marked as Exhibit 9. It says the following:

“AGREED STATEMENT OF FACTS
and
ADMISSION OF CONDUCT DESERVING OF SANCTION

1. Mark H. DeMong is a member of the Law Society of Alberta, having been admitted on March 15, 1996. Mr. DeMong was a member at all times relevant to this proceeding.
2. Mr. DeMong faces seven citations as follows:

J. H. complaint

1. It is alleged that you knowingly practiced law in Alberta while not authorized to do so, and that such conduct is conduct deserving of sanction.
2. It is alleged that you misrepresented your professional status to other persons, and that such conduct is conducted deserving of sanction.

Law Society of Alberta complaint

3. It is alleged that you knowingly practiced law in Alberta while not authorized to do so, and that such conduct is conduct deserving of sanction.
4. It is alleged that you misled others as to your entitlement to practice law in Alberta, and that such conduct is conduct deserving of sanction.

5. It is alleged that you failed to respond to the Law Society in a timely manner, and that such conduct is conduct deserving of sanction.
6. It is alleged that you breached the accounting rules of the Law Society of Alberta by failing to make necessary filings, and that such conduct is conduct deserving of sanction.
7. It is alleged that you failed to serve a number of clients in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.

Fact Summary

2. From the date of Mr. DeMong's admission until March, 2007, Mr. DeMong practiced in Lloydminster and maintained membership in both the Law Society of Alberta and the Law Society of Saskatchewan. He chose to carry his professional liability insurance through the Saskatchewan Lawyer's Insurance Association.
3. From March 2007 to September 2007, Mr. DeMong practiced as a sole practitioner in Fort Saskatchewan, Alberta, still maintaining his Saskatchewan insurance coverage.
4. During 2007 and 2008, Mr. DeMong joined the Burkinshaw law office in Sherwood Park, and then returned to his sole practitioner practice in Fort Saskatchewan.
5. On April 1, 2008, while he was in practice in Fort Saskatchewan, Mr. DeMong was suspended by the Law Society of Saskatchewan for failing to file reports. The Law Society received notice of Mr. DeMong's suspension *I. R. Tab 2*
6. Between April 2008 and August 2008 there was communication between the Law Society of Alberta staff and Mr. DeMong with respect to his insurance coverage and his entitlement to practice law. *I. R. Tab 3*
7. On September 22, 2008, the Law Society wrote to Mr. DeMong summarizing the communication which had occurred and the relevant Rules of the Law Society. The letter noted that as Mr. DeMong no longer had insurance coverage in Saskatchewan he did not have practicing status in Alberta, and that as a result he was required to apply for reinstatement. The letter went on to say "you are currently not entitled to practice" and further set out the application forms which would be required and the process that would be followed with respect to that application.
8. Mr. DeMong responded by way of an email dated September 23, 2008. He indicated that he was in shock. He inquired as to the insurance

invoice. He asked for directions with respect to his current file and asked whether or not he needed to have the Law Society appoint a custodian for his files. He went on to say “my understanding is that I am simply allowed to bill work in progress and meet with clients for the sole purpose of informing them of my status”. He noted further that the timing on this was “horrible” as he had just agreed to join an Edmonton firm and was to start on October 1st. *I. R. Tab 4, page 3*

9. The Law Society responded on September 24th. Ms. Gallo-Dewar acknowledged receipt of the insurance application but indicated that it was premature as an application for reinstatement was required. She indicated that it was preferable not to appoint a custodian if possible, and asked whether or not he had considered having another lawyer take care of his practice until the matter was resolved. *I. R. Tab 4, page 3*
10. On September 26, 2008, Mr. DeMong forwarded the reinstatement application to the Law Society. Attached to that application was Schedule A, which set out the particular circumstances of the Saskatchewan suspension. In Paragraph 9 of Schedule A, which was prepared by Mr. DeMong he indicated “upon notification that I have been suspended on September 22, 2008, I have not been involved in the practice of law”. *I. R. Tab 5*
11. On September 30th there was a series of emails between Mr. DeMong and Jacqueline Keats of the Law Society. In one of Mr. DeMong’s emails, he asked for an estimate of the time frame that would be required to process the application in Alberta. *I. R. Tab 5, page 9*
12. On October 3rd, Angela Gallo-Dewar, on behalf of the membership services department, wrote a memo to the Practice Review Committee in which she indicated that in Mr. DeMong’s application for reinstatement he disclosed that he had been convicted of impaired driving, and that he had been suspended by the Law Society of Saskatchewan. She expressed concern as to his ability to manage his practice and on that basis referred Mr. DeMong’s reinstatement application to the Practice Review Committee. *I. R. Tab 5, page 11*
13. On October 11, 2008, Norman Picard of the firm Barr Picard wrote to Barbara Cooper with respect to the reinstatement application. Mr. Picard confirmed Mr. DeMong had joined the Barr Picard firm on or about October 1, 2008, but that they were aware that he was unable to carry on the practice of law until any insurance assessment issues were addressed with the Law Society of Saskatchewan and that thereafter the reinstatement application with the Law Society of Alberta was concluded. He noted that all issues with respect to the Law Society of Saskatchewan had been addressed. He asked that the reinstatement application be expedited so that he could be able to practice at the earliest possible opportunity. *I. R. Tab 6*

14. On November 5, 2008, Barbara Cooper of the Law Society wrote to Mr. DeMong at Barr Picard setting out additional information which was required before the application for reinstatement could proceed. In particular, she asked for further information with respect to Mr. DeMong's impaired driving conviction and for further information with respect to his firm's accounting records for 2007 and 2008.
15. On November 27, 2008, Mr. DeMong sent two letters to Ms. Cooper. The first provided information with respect to the impaired driving conviction. The second provided information with respect to his trust records for the period of 2007 and 2008 which had been requested. He noted that "from the date I was notified of the suspension (on or about September 22nd, 2008) I have not authorized any trust transactions". He proposed to transfer the remaining funds in his trust account to the trust account of Barr Picard. *I. R. Tab 8*
16. There were two issues with respect to the trust account records and as a result on February 11, 2009 Mr. DeMong executed an undertaking at the request of Lisa Atkins of the Law Society audit department. *I. R. Tab 8, page 4*
17. On March 6, 2009, the Law Society wrote to Mr. DeMong requesting further trust account documentation. *I. R. Tab 8, page 6.* Correspondence with respect to the accounting records and the undertaking continued throughout March of 2009.
18. Mr. DeMong's impaired driving conviction was not reported to the Law Society of Alberta as required by Rule 105. The failure to report was referred to the Conduct Department for review.
19. As part of the review by the Practice Review Department, Law Society counsel noted that it appeared that the member had been practicing law without authorization, having been uninsured in Alberta when he re-located from Lloydminster in September, 2007. That issue was also referred to the Conduct Department.
20. On January 6, 2009, the Practice Review Panel reviewed the reinstatement application, and approved the reinstatement application subject to three conditions as follows:
 - a. that Mark DeMong pay the applicable fees and levies for the current year prior to reinstatement;
 - b. that Mark DeMong provide a written undertaking to the executive director to self – refer and cooperate with Practice Review..., and
 - c. that Mark DeMong file his forms S, T and if applicable, U, in a form acceptable to the audit department on or before January 30, 2009, and in any event prior to his reinstatement. *I. R. Tab 9*

21. On February 27, 2009, Garner Groome of the Law Society of Alberta wrote to Mr. DeMong indicating that he intended to object to the reinstatement application until such time as the matter of outstanding conduct issues was resolved. He referred in particular to concerns with respect to recent allegations of unauthorized practice. *I. R. Tab 10, page 13*
22. On March 3, 2009, Maurice Dumont, Manager of Complaints for the Edmonton Law Society wrote to Norman Picard and provided to him a chronology of the events relating to Mr. DeMong.
23. On March 5, 2009, Norman Picard, as counsel for Mr. DeMong, wrote to Mr. Dumont expressing concern and surprise at Mr. Groome's position and Mr. Dumont's lack of knowledge of Mr. Groome's position. He expressed concern about the "systemic delays that have plagued this matter" and hoped that the reinstatement application and the allegations of unprofessional practice would be dealt with shortly. *I. R. Tab 10, page 11*
24. On March 24, 2009, Mr. Dumont wrote to Norman Picard expressing concern that Mr. DeMong had not been forthright with clients regarding his status. The specific clients referred to were: D.Y., R.S. and W. and E.S.
25. On May 7, 2009, Nancy Stenson wrote to Laura Stevens (who was now counsel for Mr. DeMong) advising that an investigation order had been issued and asking for four files relating to the three individuals referred to in the preceding paragraph and M.V.
26. While the investigation was proceeding, Mr. Gordon Barr of Barr Picard wrote to the Law Society proposing that Mr. DeMong be allowed to continue to be involved with active files while under the supervision of another lawyer in his office, pending completion of the investigation. *I. R. Tab 11*
27. At Nancy Stenson's request various files were forwarded to her either by Mr. DeMong or Mr. Barr together with a copy of Mr. DeMong's client list. *I. R. Tab 11, pages 6-15*
28. On September 2, 2009, Maurice Dumont wrote to Mr. Barr indicating that it had come to the Law Society's attention that Mr. DeMong may not have limited himself to the activities outlined in Mr. Barr's letter of May 8th, and that he was continuing to conduct himself as an active member of the Law Society.
29. Mr. Dumont asked for a written undertaking from Mr. Barr, Mr. Picard and Mr. DeMong that he would not engage in the practice of law and that his activities would be limited to legal research, document drafting, review of

document precedents and review of internal document preparation systems to increase efficiency.

30. Written notices were provided to Mr. DeMong's clients to confirm his non practice status. The correspondence relating to the undertaking and the notices to the clients are at *I. R. Tabs 12 and 13*.

D.Y./G.M. file

31. The information relating to the D.Y./G.M. complaint is at *I. R. Tab 14*.
32. Mr. DeMong acted for G.M. with respect to an application for a variation of child support and access relating to Mr. M.'s children from a previous relationship.
33. The new file report is at *I. R. Tab 14, page 1*.
34. Emails between Mr. DeMong, Mr. M. and the solicitors for Mrs. M. are enclosed in the material.
35. A Consent Order was prepared which listed Mr. DeMong as solicitor for the defendant (G.M.). The terms of the draft order were the subject of communications between Mr. DeMong and counsel for the wife (Russell Horne of Murray Chilibeck). From the face of the documents and the correspondence, it appeared that Mr. DeMong was acting as counsel and as a member of the Law Society of Alberta.

J.S. file

36. A complaint was received from J.S., who was a client of Mr. DeMong's. The complaint was received by the Law Society on February 15, 2009 and is at *I. R. Tab 15, pages 8-11*. The crux of the complaint was that Mr. DeMong had acted as solicitor for J.S. with respect to a house purchase in 2008, but there were compliance issues with respect to the home. Mr. S. asserted that Mr. DeMong had agreed to rectify the problem, and to pay Mr. S. \$500 as compensation for his work dealing with the compliance issues. Mr. S. initially wrote to the Better Business Bureau then complained to the Law Society.
37. The file was opened after Mr. DeMong's suspension by the Law Society of Saskatchewan, on April 1, 2008. The correspondence on the file dealt with issues relating to the Real Property Report and an encroachment issue.
38. The documents indicate that Mr. DeMong was notified about the complaint in early 2009 and then in March, 2009, a new file with respect to the matter was opened at Barr Picard. The responsible lawyer was listed as M. D.

39. On March 6, 2009, Mr. DeMong sent a written settlement proposal with respect to the encroachment issue to counsel for the vendor, *I. R. Tab 15, page 19*.
40. On March 4, 2009, Maurice Dumont wrote to Mr. DeMong requesting his written response to the complaint from Mr. S. The letter is at *I. R. Tab 15, page 15*. The letter was a Section 53 Demand.
41. There was no response from Mr. DeMong, and as a result Mr. Dumont sent a follow up letter which was dated April 14, 2009. *I. R. Tab 15, page 20*
42. On the same date, Mr. DeMong and J.S. communicated by email and resolved the issue.
43. On April 22, 2009, Mr. DeMong wrote to Darren Moroz, the solicitor for the vendors. His letter of that date had the word non-practicing in quotes below his name.
44. Mr. DeMong provided his written response to the complaint by way of letter dated June 2, 2009 *I. R. Tab 15, page 24*. He advised of the resolution of the J.S. complaint and explained the computer difficulties which he had as a result of closing his sole practitioner's office and problems which he had accessing the file records from that time period.

Alastair Grant complaint

45. Alistair Grant wrote to the Law Society's complaint department regarding a breach of undertaking by Mr. DeMong. The letter of complaint is at *I. R. Tab 16, page 14*
46. Mr. Grant indicated that he had acted for the purchaser of a residential property and that Mr. DeMong had acted for the seller. The transaction closed June 6, 2008. By letter dated June 3rd, Mr. DeMong had made an undertaking to payout and discharge a mortgage to the Bank of Nova Scotia. Despite a number of requests for the discharge, it had not been provided. Mr. Grant indicated that he had written to Mr. DeMong on October 16, 2008, November 17, 2008, December 2, 2008, December 16, 2008, January 14, 2009 and January 19, 2009.
47. On March 4, 2009, Mr. Dumont sent a Section 53 demand letter to Mr. DeMong asking for his written response to the complaint.
48. On March 6, 2009, Mr. DeMong wrote to the Bank of Nova Scotia asking for a registerable discharge.
49. On March 9, 2009, Mr. DeMong opened a new file in the name of D.P. with respect to the file at Barr Picard. The responsible lawyer was M. D. The new file report is at *I. R. Tab 16, page 19*.

50. On March 27, 2009, the Bank of Nova Scotia provided the registerable discharge.
51. On April 14, 2009, Mr. Dumont wrote to Mr. DeMong confirming that he had not had any reply to the Section 53 demand letter.
52. On the same day, Barr Picard wrote to Alistair Grant providing a certified copy of title evidencing the discharge of the mortgage.
53. On May 8, 2009, Barr Picard reported to their client with respect to the discharge, and forwarded to her the balance of the trust funds which they had been holding pending completion of the transaction.
54. On June 2, 2009, Mr. DeMong provided a written response to Mr. Dumont. The response indicated that the delay had been occasioned by Scotiabank and that they had allowed his request to fall through the cracks. He also indicated that he had some computer and systems issues with respect to shutting down his practice in Fort Saskatchewan and moving to Barr Picard. *I. R. Tab 16, pages 30-31*

Darren Moroz complaint – re: S. sale

55. In February, 2009, Mr. DeMong opened a new file with respect to a purchase by W. and E.S. The responsible lawyer was listed as M. D.
56. Mr. DeMong states that he told the S.'s that he was not practicing and that it would be necessary to have another lawyer involved on the file.
57. On March 16, 2009, Mr. DeMong wrote to Darren Moroz (who was the solicitor for the purchasers) forwarding the transfer documents and providing undertakings with respect to payment out of non-permitted encumbrances. *I. R. Tab 17, pages 7-10*. The letter was listed as being from Mark DeMong, however B. Howell (another lawyer with the firm) signed the letter.
58. On March 17, 2009, Darren Moroz wrote to Barr Picard indicating that he could not accept the trust conditions or undertaking as a result of Mr. DeMong's non practicing status.
59. On March 18, 2009, a duplicate copy of that letter was sent. It was again sent by B. Howell but this time was listed as being on behalf of Patrick Hlavac-Winsor (who was also a lawyer with the firm).

Complaint of R.S.

60. On March 25, 2009, R.S. completed the "complaint about someone else's lawyer" form and submitted it to the Law Society. Mr. S was the plaintiff

in a small claim's action in which the defendants were M.V., I.M., K.K. and a numbered company. Mr. V. retained Mr. DeMong on October 14, 2008, while Mr. DeMong was still in practice at his Fort Saskatchewan office.

61. On October 15, 2008, a new file was opened under the V. name at Barr Picard showing M.D. as the responsible lawyer.
62. On October 15, 2009, Mr. DeMong filed a Dispute Note on behalf of Mr. V. with the provincial court clerk. Mr. DeMong did not circle any of the options as the capacity in which he was filing the document. The options included "defendant, agent or solicitor".
63. Mr. DeMong subsequently attended at a provincial court mediation session with Mr. V. The mediation was unsuccessful and as a result a trial date was scheduled.
64. On December 10, 2008, Mr. DeMong sent a reporting letter to Mr. V. together with a reporting letter. The account was signed by Mr. DeMong.
65. On March 9, 2009, Mr. S. wrote to Mr. DeMong indicating that he had learned that Mr. DeMong's status was listed on the Law Society website as non-practicing. He indicated that he expected to be notified as to who, if anyone, would be acting for Mr. V. with respect to the trial. He indicated that he would oppose any adjournment request being sought as a result of the change of counsel.
66. On March 17, 2009, Mr. DeMong responded to Mr. S. indicating that he had received his correspondence, and that he Mr. S. would receive a reply when the correspondence was either relevant to the provincial court civil claim, or worthy of a reply. *I. R. Tab 18, page 30*
67. Mr. S. wrote to Mr. DeMong on March 19, 2009 indicating that he would continue to copy his correspondence to Barr Picard to M.V.
68. On March 25, 2009, Mr. Dumont of the Law Society sent a Section 53 Demand letter to Mr. DeMong asking for his written response to Mr. S.'s complaint letter.
69. On March 31, 2009, an account was rendered to Mr. V. It indicated that Mr. DeMong's hourly rate was \$300 per hour. That account was sent to Mr. V. by way of a letter signed by Patrick Hlavac-Windsor. *I. R. Tab 18, page 40*
70. On April 15, 2009, Mr. Dumont sent a letter to Mr. DeMong indicating that he had not received any reply to the Section 53 letter.
71. Mr. Hlavac-Windsor attended to the V. per-trial conference and dealt with the balance of the file. *I. R. Tab 18, chronology page 5*

72. On May 29, 2009, Gordon Barr wrote to Mr. V. confirming that Mr. DeMong was non practicing and indicated that the firm had taken steps to have his status returned to practicing. He also confirmed that in the meantime the file would be under the supervision of Patrick Hlavac-Windsor.
73. On June 2, 2009, Mr. DeMong wrote to Mr. Dumont responding to the formal complaint. He summarized the information listed above with respect to the difficulties which had occurred in closing down his Fort Saskatchewan practice. He confirmed that he had been suspended in Saskatchewan for failure to file the appropriate trust returns but that he had been reinstated by the Law Society of Saskatchewan effective October 16, 2008. He outlined the history of his payment of the Alberta insurance premiums and acknowledged that on September 22, 2008 he had received correspondence stating that because he had not paid for insurance for 2008 and 2009 he was not entitled to practice law in Alberta. He acknowledged that he had been informed that it was necessary to formally apply for reinstatement, and that he had filed the application. He indicated that he had made the assumption that his reinstatement would be completed soon after having filed the application form and that he had improperly assumed that he would be able to act on behalf of Mr. V.
74. He acknowledged that he had erred in taking the following steps:
- a. Attending at the Court of Queen's Bench as agent for a litigant to adjourn a matter;
 - b. Signing Mr. V.'s Dispute Note without indicating "agent" clearly on the document;
 - c. Attending the mediation session without indicating to all present that I was attending as agent for Mr. V. and not as counsel.
75. Mr. DeMong apologized to Mr. S. *I. R. Tab 18, page 48-50*

J.H. complaint

76. J.H. met with Mr. DeMong for the first time on October 27, 2008 with respect to a custody issue relating to Mr. H.'s children.
77. On January 12, 2009, Deborah Snow of the firm Attia Reeves Tensfeldt Snow (who acted for the mother) wrote to Mr. DeMong confirming that she acted on behalf of Mrs. L.S. She confirmed that Mr. H. had advised her that Mr. DeMong would be representing Mr. H. She asked for confirmation of that. She also noted that the trial had been ordered to be heard prior to February 15, 2009.
78. On January 16, 2009, a new file was opened at Barr Picard. The responsible lawyer was listed as Mark H. DeMong. *I. R. Tab 19, page 9*

79. On January 22, 2009, a retainer letter was sent from Barr Picard to Mr. H. The retainer letter was signed by Mark H. DeMong.
80. On January 27, 2009, a letter was sent by Barr Picard to Deborah Snow and Andrea G. Doyle, counsel with the Family Law Office with respect to the J.H. matter. The opening line indicated “we act for J.H....You may contact my assistant, Lori-Ann, to confirm my availability for a trial date prior to February 15, 2009.” The letter is signed by Mark H. DeMong.
81. On February 2, 2009, Mr. DeMong sent a draft Consent Order to Ms. Snow and Ms. Doyle. On February 3, 2009, Ms. Snow wrote to the Edmonton Court of Queen’s Bench Trial Coordinator confirming that the trial was to be set down on an expedited basis for February 17, 2009, and that opposing counsel, Mr. Mark DeMong, and counsel for the children, Ms. Doyle, had confirmed their availability. *I. R. Tab 19, page 19*
82. On February 5, 2009, Mr. DeMong sent opposing counsel a revised Consent Variation Order. Mr. DeMong was listed as solicitor for the defendant.
83. On February 12, 2009, Mr. DeMong sent an email to Ms. Snow indicating that he would recommend that Mr. H. consent to the proposed Order with certain changes.
84. Ms. Snow responded by way of letter dated February 13 (the Consent Order was subsequently entered into and is at *I. R. Tab 19, page 29*). The Order was consented to be (sic) Mark H. DeMong as solicitor for the defendant.
85. The order was a consent order granted by Justice Belzil on February 12, 2009.
86. On February 17, 2009, a second consent order was entered into. It is at *I. R. Tab 19, page 32-36*. That Order was also consented to by Mark DeMong as solicitor for the defendant.
87. On February 19, 2009, Mr. DeMong sent a reporting letter to Mr. H. It confirmed that he had attended with Mr. H. at the Court of Queen’s Bench on February 17, 2009 to enter the terms of the Consent Order before Justice Ouellette. A Statement of Account was also enclosed with that letter which indicated that Mr. DeMong’s hourly rate was \$300 per hour.
88. Mr. H.’s complaint letter of April 3, 2009 is at *I. R. Tab 19, page 46*. It indicated that he had believed that Mr. DeMong was a practicing lawyer. He confirmed that he had been billed at the rate of \$300 per hour and he indicated that based on Mr. DeMong’s advice to him, his position had been swayed.

89. Mr. H. further indicated that he had concerns about the lack of contract between himself and Mr. DeMong immediately prior to the February 17th trail date. He indicated that he had requested copies of draft documents from Mr. DeMong but that they had not been provided to him and that he felt that Mr. DeMong at Barr Picard had not fulfilled the terms of the retainer agreement. He asked to be reimbursed for the amount which he had paid in fees to the firm.
90. On April 7, 2009, Mr. Dumont sent a Section 53 Demand Letter asking for his written response to the complaint from Mr. H.
91. On June 2, 2009, Mr. DeMong provided his written response. He summarized the issues relating to closing down his Fort Saskatchewan practice and the move to join Barr Picard in Edmonton. He indicated that at the time of his second appointment with Mr. H, he had the strong impression that his application for reinstatement was to be approved shortly. He indicated that “when I spoke with Ms. Cooper in December I understood the final step would take place at a meeting on a date set in early January, 2009”. He admitted that he should have informed Mr. H. of his status in the initial retainer. He took sole responsibility for the failure to inform Mr. H. of his status. He indicated that the advice he had offered Mr. H. was based on his experience and that he was comfortable with the preparation for the anticipated trial. He indicated that the draft order was prepared at his office but that the document had been taken by Ms. Snow for filing. He indicated that he did not believe that Ms. Snow had somehow altered the document as apparently suggested by Mr. H. He acknowledged that he had misled Mr. H. with respect to his status. In conclusion, he said the following:

“I have made two serious administrative errors that have resulted in an unexpected and lengthy interruption in being able to practice law. I did not properly appreciate the situation as it developed and did not handle it correctly with the clients, including Mr. H. I believe I served him well and efficiently, however I understand that I was not entitled to do so until fully reinstated”

92. Mr. DeMong offered his apologies to Mr. H. and the Law Society.

Complaint from R.M.

93. In August, 2009, R.M. retained the firm of Barr Picard with respect to her purchase of a condominium. Ms. M. indicated in her complaint *I. R. Tab 20, page 12*, that her son had recommended Mr. DeMong as he had acted for the son previously. Ms. M. had arranged for financing through the Toronto Dominion Bank.
94. On August 13, 2009, (the day before the closing date) Ms. M. met with Patrick Hlavac-Windsor. She indicates that there were errors in the documents and in particular that the interest rate showed as being much

higher than had been approved by TD. A second meeting was therefore scheduled, at which Ms. M. met with Patrick Hlavac-Windsor and that the documents were signed.

95. August 17, 2009, Ms. M. submitted her complaint to the Law Society, and on that same date she met with Barr Picard.
96. On August 19, 2009, an account was prepared under the name of Norman J. Schindler (another lawyer at Barr Picard) indicating that Mr. DeMong's hourly rate was \$300 per hour.
97. Ms. M. subsequently retained Mr. Ng to act for her. Barr Picard wrote to Mr. Ng on August 19, 2009 asking when a courier would be picking up the file. *I. R. Tab 20, page 21*
98. The letter confirms that the client had advised him on August 13th that the mortgage rate should have been prime + 1 and instead was prime + 5. It also described her dissatisfaction with the documents.

W. and C.F.

99. In reviewing files of Mr. DeMong it was noted that he was retained by the Fs in October, 2008 with respect to the preparation of wills and powers of attorney. Draft wills were provided to the clients on October 29, 2008, *I. R. Tab 27, pages 3 and following*
100. Mr. DeMong was subsequently interviewed by Nancy Stenson and Pamela Jenkyns of the Law Society. As part of the interview, Mr. DeMong acknowledged that he took instructions from the Fs and prepared wills and powers of attorney *I. R. Tab 40, page 133*
101. He indicated that he had attended on the signing and said "I imagine I signed a certificate of independent legal advice on the power of attorney". *I. R. Tab 40, page 133*

File of S.K.

102. S.K. retained Mr. DeMong to represent her with respect to a claim for her divorce and division of matrimonial property. Ms. K. was not contacted by the Law Society's investigator, however the file was reviewed. The file information indicated that a Statement of Claim and Notice to Disclose were filed on Ms. K.'s behalf on December 18, 2008. On the backer of both documents Mr. DeMong was shown as the contact person at Barr Picard, and he signed the Statement of Solicitor to comply with section 9 of the *Divorce Act*. *I.R. Tab 28, page 7*
103. The file contained letters between Mr. DeMong as counsel for Ms. K. and Shirley McNeilly who was the solicitor for W.K. Correspondence

appeared to have been sent between counsel on the basis that Mr. DeMong was acting for Ms. K. There were also a number of emails in which Mr. DeMong provided advice to Ms. K.

104. An account was sent from Barr Picard to Ms. K. on January 15, 2009. Mr. DeMong's time was billed at \$300 per hour.
105. On July 23, 2010, Nancy Stenson wrote to Ms. McNeilly providing her with a copy of an investigation order and asking for her written response with respect to questions with respect to Mr. DeMong's involvement in the file. *I. R. Tab 28, page 38*
106. On July 27, 2010, Ms. McNeilly responded indicating that she had no reason to believe Mr. DeMong was not authorized to practice law in the province of Alberta and that she had not been aware that Mr. DeMong was not authorized to practice law in Alberta. *I. R. Tab 28, page 36.*

File relating to X Ltd.

107. In December, 2008, Mr. DeMong was contacted by R.R. with respect to the possible purchase of a business. Mr. R. had previously been represented by Mr. DeMong. There are a series of emails between Mr. R. and Mr. DeMong from which it appears that Mr. DeMong was providing legal advice with respect to the possible purchase.
108. Mr. DeMong was asked about this advice when he was interviewed by Ms. Stenson and confirmed that Mr. R. had likely been under the impression that he was authorized to practice law. *I. R. Tab 40, page 137-138*

File relating to B.C.

109. On February 2, 2009, Mr. DeMong was contacted by Mr. C. with respect to whether or not Mr. DeMong would represent him with respect to an alleged assault on his common law spouse.
110. On February 2, 2009, Mr. DeMong sent a retainer letter to Mr. C. confirming the terms on which the firm would be retained. That retainer was signed by Mr. DeMong.
111. On February 23, 2009, Mr. DeMong wrote to the Crown Prosecutor's Office in Fort Saskatchewan indicating that "our office acts for B.C.". He went on to ask for certain information. The letter was signed by Mr. DeMong. *I. R. Tab 30, page 6*
112. Mr. C. was billed on the basis that Mr. DeMong's time was billable at the rate of \$300 per hour.

113. The Law Society's investigators contacted the Crown Prosecutor's Office with respect to the files. The letter from Terry Hofmann is at *I. R. Tab 30, pages 13, 14*. In that letter, Mr. Hofmann indicates that he obtained transcripts on the appearances on February 4th and 11th, and at that time Mr. DeMong had indicated to the court "Mark DeMong for Mr. C., Mr. C.'s (sic) present" and "I would point out I had a brief discussion with respect to my client's conditions,...". Mr. Hoffman pointed out there was no disclosure by Mr. DeMong that he was not authorized to practice law on the official court record.
114. The portion of the court record indicates that Mr. DeMong was present for Mr. C. and that Mr. C. is present.

All of these facts are agreed to and admitted.

I agree that the facts as set out above constitute conduct deserving of sanction. This Agreement is dated the 30th day of October, 2012.

"initials"
Witness

M.H. DeMong
Mark H. DeMong

[One non-substantive correction to paragraph 4, for the record, in that the place of practice was corrected to state Lloydminster - not Fort Saskatchewan - which amendment was duly made and initialed in the original document tendered by the Member and marked as Exhibit 9.]

F. DECISION AS TO CITATIONS

Section 49 of the *Legal Profession Act* states that any conduct of a Member that is incompatible with the best interests of the public or of the members of the Law Society of Alberta or that tends to harm the standing of the legal profession generally, is conduct deserving of sanction. That test obliges us to analyze the conduct from the perspective of the effect it has or could have on the best interests of the public or reputation of the legal profession generally. The Hearing Committee finds that the Member's conduct was incompatible with the best interests of the public and, further, the Member's conduct could have and, in fact did have a negative effect on the reputation of the legal profession.

The Hearing Committee finds that Exhibit 9 - the Agreed Statement of Facts and Admission of Guilt – is in acceptable form. Therefore, pursuant to s.60(4) of the *Legal Profession Act* the Member's admission of guilt is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member described in Citations 1, 2, 5, 6 and 7, is conduct deserving of sanction.

After hearing submissions by Counsel, the Hearing Committee also finds that the allegations set out in Citations 3 and 4 are only particulars of the misconduct described and admitted in the other Citations just mentioned.

G. DECISION REGARDING SANCTION

The Member has taken responsibility for his misconduct.

The Member has sincerely apologized for his misconduct.

The Hearing Committee accepts Mr. DeMong's apologies for his lapses of judgment and consequent misconduct.

In the unique circumstances of this case, the Hearing Committee is compelled to consider the very negative and deleterious effect of alcohol abuse on the Member's judgment, professional behaviour and memory during the period of time that the misconduct occurred.

The Hearing Committee heard from LSA Counsel and Member's Counsel. Mr. DeMong also testified under oath.

(a) LSA Counsel Submissions

LSA Counsel indicated that the pattern of misconduct admitted by the Member was exacerbated by stress, divorce proceedings and alcohol abuse, which stressors affected the Member all at once.

LSA Counsel submits that, notwithstanding these problems, the primary goal of Law Society of Alberta disciplinary proceedings is the protection of the public. To that end, it is said that the Member's conduct was detrimental to the reputation of the legal profession, caused risk of harm to the public and also undermined the Law Society of Alberta's ability to govern its members in the public interest.

LSA Counsel points out that throughout the course of his misconduct, the Member had actual knowledge that he ought not to be behaving as he did and this behavior gives rise to concerns about the Member's governability.

LSA Counsel submits that a suspension of 90 to 120 days would be in order, to reflect proper and adequate denunciation of the Member's particular conduct. The Member should also be ordered to pay the total costs incurred by the Law Society of Alberta.

LSA Counsel fairly concedes that the Member has made remarkable strides in addressing his addiction problem but his addiction will be a life-long struggle. As to considerations about future monitoring and supervision - should the Member elect to return to practising law - LSA Counsel indicates that appropriate conditions can be put in place to ensure future protection of the public and future governability of this Member.

LSA Counsel submits, in this case, general deterrence ought to be paramount in guiding the severity of sanction.

(b) Member's Counsel Submissions

In her submissions, Member's Counsel confirmed that the Member is in a much different place today than when his alcohol addiction was "the monkey running the show", as it was so descriptively and aptly put.

During the period of time in which the misconduct occurred, the Member was trying to keep everyone away: his addictive behavior, in consequence, was spiraling out of control.

Member's Counsel concedes that the Member's decisions were bad but also says that these decisions were made during a time in which the Member was consumed by the life-destroying effects of active, mind-controlling addiction. That is, bad decisions were made during a period of time in which the Member was keenly and primarily focused on the consumption of gross amounts of alcohol in order to get drunk, regardless of the high probability of negative outcomes due to this behaviour.

Member's Counsel commented, for example, on the extent of the Member's addiction-fuelled analyses – he used almost scientific precision to calculate how far, in any given situation, he could fall into copious alcohol consumption without (as was described) “tipping the barrel over the cliff”.

Member's Counsel also notes that it is common in such active addiction phases for the addicted individual to start losing track of matters of importance. In the case of lawyers, at the beginning of the descent into alcohol-driven living, the addict starts running into administrative problems in their professional life. Sadly, the personal and professional fallout of the addiction very often keeps escalating to the point where the lawyer finds himself or herself in very serious and permanently damaging situations.

Here, the Member rationalized that he must keep his addiction-related problems “quiet” because he had just been hired by a very good law firm and did not want to disclose his personal problems to his new employer, for fear of their disappointment and personal or professional repercussions.

Member's Counsel submits that while it is true that when the Member was consuming alcohol to the level required by his addiction, certainly there was a risk of harm to the firm's clients and to the public at large; however, it is equally true that on the facts of this case, there was no actual harm done to the public. Thus, it is submitted, governability is the only real issue.

(c) Member's Testimony

The Member, in his testimony, was most candid and forthright, neither excusing himself nor his admitted misconduct, blaming no one and nothing: He spoke of losing his moral compass with the breakdown of his marriage and the painful separation from his five children. He spoke of losing his professional way and having to start again, after years of professional success. He had to move from his place of practice. He lost his colleagues and his friends. He became ill and unmoored. He spoke of the careful planning and deliberation that went into deciding when, where and how much he could drink – not when he had children's' events to attend, or child care responsibilities, not when he had to drive his vehicle, not when he had court or client dates – meaning, usually, that he engaged in these bouts of heaviest drinking very late at night and into the early morning hours. He spoke of his recovery, his relapses. He spoke of the stark reality he was called upon to face when he was given a terminal cancer diagnosis, treatment for which was potentially life-saving but unavailable if he continued to abuse alcohol. He spoke of his great admiration of and genuine affection for all the people who helped him to get sober and stay sober, including his step program friends. He spoke of being wholly and very painfully aware that he has let down his family, his profession, the Courts and, perhaps most unfairly, the

members of the firm who innocently placed their faith and trust in him. He knows that redemption will be a long time coming, if ever, and will be exceedingly hard won.

Finally, although the Member knows (and told us fairly and honestly) that he cannot guarantee that he will stay sober, the Member has expressed his unqualified willingness to engage in whatever conditions, monitoring or supervision that may be required by the Law Society of Alberta to ensure ongoing protection of the public and governability should he decide to return to active practice.

Member's Counsel said that to impose a costs order without reasonable time to pay will be a significant obstacle, due to the Member's financial obligations to his family.

The Hearing Committee noted that while the conduct of the Member raised some issues of governability, and demanded both specific and general deterrence, there was no harm done to any member of the public or the profession as a result of the Member's misconduct. The Member has suffered greatly because of his addiction, as outlined above.

Further, the Member fully acknowledged his professional wrongdoing and admitted his guilt, thus sparing the Hearing Committee, the Law Society of Alberta and all other potential participants a lengthy and costly hearing.

We note that there is no citation relating to a breach of undertaking by the Member. On balance, the consequences of the Member's conduct were much less serious than in the other cases offered by LSA Counsel: this case is largely distinguishable from these other cases considered by the Hearing Committee:

1. Law Society of Alberta v. Singh, [2008] L.S.D.D. No. 11;
2. Law Society of Alberta v. Averback, [2000] L.S.D.D. No. 43;
3. Law Society of Alberta v. Holman, [2002] L.S.D.D. No. 27; and
4. Law Society of Alberta v. Burchak, [2008] L.S.D.D. No. 130.

In the result and notwithstanding that LSA Counsel submits that a period of suspension is appropriate in this case, the Hearing Committee - having also reviewed the decisions provided by LSA Counsel, listened to the submissions of Member's Counsel and considered the Member's testimony and answers to questions from the panel - finds that the just and appropriate sanction in the discrete circumstances of this case is a reprimand and payment of costs in a sum certain – a not inconsiderable penalty standing on its own.

H. THE REPRIMAND

The Chair of this Hearing Committee delivered the reprimand, attached as Appendix "A" to this decision.

The Hearing Committee also directs that prior to the Member's reinstatement, all conditions of a reinstatement panel and practice review or any other department of the Law Society of Alberta

shall be fully met and that each department of the Law Society of Alberta that may be involved in the Member's application for reinstatement must be provided with the written decision of this Hearing Committee.

I. COSTS

In addition to the reprimand, the Member is ordered to pay costs of this hearing in the fixed amount of \$3,200.00, such costs payable in full within 12 months of the Member returning to the authorized practice of law.

J. CONCLUDING MATTERS

There will be no referral to the Attorney General.

The Exhibits and proceedings will be available for public inspection, including the provision of copies of Exhibits for a reasonable copy fee, except that the identities and other identifying information about clients shall be redacted from those Exhibits.

Dated this 2nd day of January, 2013.

Frederica Schutz, Q.C. (Chair and Bencher)

Dr. Ohlhauser, M.D. (Bencher)

Mr. Robert Harvie, Q.C. (Bencher)

APPENDIX "A"

Mr. DeMong, the prohibition against unauthorized practice seems to have had its origin at common law in the prevention of fraud on the public by misrepresentation or by holding out. This prohibition was to be applied to every legal service which required the skill and knowledge and expertise of a lawyer. The goal was to protect the public from those who do not have the education, competence, integrity, or probity demanded of a practising lawyer. The prohibition was designed to protect against unethical behaviour and to protect solicitor-client privilege.

Here, Sir, it is not in particular your competence or loyalty or ability that is impugned. You have practised law since March of 1996.

Rather, in this case, Law Society of Alberta counsel made clear that the most compelling reason for a strong denunciation by sanction is because members of the public who consult a lawyer or believe they are consulting a lawyer authorized to practise law are entitled to be protected against those who, like you, although well-qualified by training and education, choose to conduct yourself in a way that could lead reasonable people to believe that you neither feel bound by the ethical standards of the profession nor are amenable to the Law Society of Alberta's self-disciplinary processes.

Sir, this conduct was seen most particularly in your admitted failure to respond to the Law Society of Alberta; your failure to divulge your conviction for an alcohol-related offence; your failure to follow accounting rules.

So, Mr. DeMong, without more, in the absence of the unique circumstances of your case, this Hearing Committee may well have concluded that you were deserving of the imposition of a period of suspension due to demonstrated ungovernability.

As you know, governability is the hallmark of our profession given the privilege of self-regulation. At the end of the day, either you will respect your regulator and comply with its lawful demands or you can no longer practise law.

Mr. DeMong, today, and hearing all of the submissions and your testimony, we're absolutely certain that you now fully appreciate this. You must never again breach your governing body's rules of practice or form-filling or administrative requirements or anything else. We understand that you understand this to be the case without exception.

Sir, the factors which lead us to conclude that this reprimand and your punishment by way of costs paid would be proportionate and appropriate without a period of suspension include -- importantly -- your admissions of guilt; your unblemished discipline record; and perhaps most critically, your candor in explaining to this Hearing Committee why, drunk or sober, time after time, your plan was really to keep things quiet so that otherwise inquiring minds would not detect anything untoward or of concern.

Essentially we heard you say to us that your addiction-fuelled plan was to so conduct yourself that you could continue working but, most importantly, you could continue drinking as and when you wished. You had determined, to a degree of scientific precision, that form of alcohol consumption that would even allow you to keep driving your vehicle.

The candor and the insight that you brought to this room today in explaining how deeply embedded was your desire to drink - above all else - was most refreshing Sir; and I know, as my Panel members know, that it was very difficult for you to admit that – and that is most commendable.

Your alcohol-drinking plans were disrupted by a terminal cancer diagnosis. Essentially you were told that you could keep drinking and be ineligible for life-prolonging chemotherapy or you could stop and vastly improve your medical prognosis over the long term.

We have heard that even then, the addiction demanded that you test the proposition. Despite having been given the stark and rather unqualified choice that you were given, you reacted by rescheduling and tweaking your alcohol consumption schedule to suit the chemotherapy. That demonstrates to all of us the alarming degree to which addiction can grab hold of an otherwise rational and competent and caring individual.

You told us that, eventually, you entered into the 12-Step Program and took it seriously. In the result, you had your last drink in April of 2011; and, Sir, our sincere congratulations.

You have shown commendable insight, as we said, and you also told us that you could guarantee us absolutely nothing going forward, other than that you would try your best to remain abstinent.

Accordingly, and having accepted your admissions of guilt and having listened carefully to your testimony and the submissions made by your Counsel and the Law Society of Alberta Counsel, we are more than satisfied that you have demonstrated and made a genuine commitment to your recovery program. You have persuaded this Hearing Committee that you have gained substantial and real insight into your future challenges in maintaining sobriety.

As Mr. R. said on your behalf -- and I quote:

I have heard all the excuses and all the ways an addict communicates the ways that he or she can set up their own relapses.

And then, Mr. R. goes on to say:

I do not hear that language from Mark. What I hear is ownership of his addiction; acknowledgment of the wrong he has committed; and his commitment necessary to a lifelong change.

We've also reviewed the other letters from members of the community -- all of whom attest to your commitment to be well.

Sir, we implore you to remember that the Assist Group in Alberta and the Law Society of Alberta have programs that perhaps can also assist you in your journey.

We have concluded, Sir, that you have suffered a lengthy period of time away from the practice of law. We have also concluded that it would best serve the people of Alberta to have you regain the right to practise, so you can help them by being a fully functioning lawyer.

We are certain that Practice Review can fashion good and appropriate conditions to protect the public should you ever suffer a relapse.

In particular, in coming to this conclusion, we note that you did not cause harm to your clients. We accept that your deceit -- most often by omission -- was driven by the bad choices you made when consumed by the demands of your addiction.

You know that you hurt those who wanted no more than to help you. Your reputation before the Courts has been sadly diminished. You will have to make amends for that, and you will have to work hard for the rest of your professional life to show that those who placed faith in you and those who are prepared to give you another chance have done the right thing.

So good luck, Mr. DeMong. We all wish you the very best.