

**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 KEVIN GUBBINS  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**HEARING REPORT**

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**A. QUORUM**

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

**B. REPRESENTATION**

The Law Society was represented by Ms. Tracy Davis (hereafter referred to as “LSA Counsel”). Kevin Gubbins, the Member was also present and waived representation by counsel.

**C. JURISDICTION AND PRELIMINARY MATTERS**

**Letter of Appointment**

A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Kevin Gubbins on June 13 and 14, 2011. The Committee consisted of Frederica Schutz, Q.C. (Chair), Sarah King-D’Souza, Q.C., Committee Member and Wayne Jacques, Esquire, Committee Member.

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.

Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor with acknowledgement of service, the Notice to Attend with acknowledgement of service and the Certificate of Status of the Member, established the jurisdiction of the Committee and were admitted into evidence by consent.

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

**D. OPEN HEARING**

The hearing was open to the public.

## **E. CHRONOLOGY OF HEARING**

This hearing commenced on June 13, 2011 and continued through June 14, 2011.

On June 14, 2011, closing arguments were delivered.

## **F. SUMMARY OF DECISIONS**

This Hearing Committee finds the Member guilty of conduct deserving of sanction in respect of Citation 1 and not guilty of conduct deserving of sanction in respect of Citation 2. The Table of Citations, Decisions and Exhibits is set out below.

## **G. TABLE OF CITATIONS/DECISIONS/EXHIBITS**

<b>Citation</b>	<b>Decision</b>	<b>Exhibits</b>
1 IT IS ALLEGED that you failed to serve your client and that such conduct is conduct deserving of sanction.	Guilty	5-14
2 IT IS ALLEGED that you engaged in personal conduct which brings the profession into disrepute and that such conduct is conduct deserving of sanction.	Dismissed	5-14

## **H. BURDEN AND STANDARD OF PROOF/ASSESSING CREDIBILITY**

Throughout, this Hearing Committee has applied the standard of proof required of this tribunal; that is, proof on a balance of probabilities and has imposed upon the Law Society of Alberta the burden of proving these allegations by “clear and convincing proof based upon cogent evidence”, sometimes called the “Bernstein” standard.

This standard relates to the quality of the evidence required but it is still the civil standard of proof on the balance of probabilities: Orkin, M. Legal Ethics (2nd ed.) 2011:Canada Law Book, at page 204, referring to Bernstein v. College of Physicians and Surgeons of Ontario, (1977), 76 D.L.R. (4<sup>th</sup>) 281 (S.C.J. Div. Ct.), at para. 41 and Law Society of Upper Canada v. Evans (2008), 295 D.L.R. (4<sup>th</sup>) 281 (S.C.J. Div. Ct., at para 41.

In Ringrose v. College of Physicians and Surgeons of Alberta [1978] 2 W.W.R. 534 (Alta. C.A.) Clement J.A. delivers judgment for the Court and says, at pages 549-551:

“The circumstances in the case at bar include the power given to the council to strike the name of a registered practitioner off of the register, which is indeed a

serious penalty. Having this in mind, I think it is well to refer to the judgment of Martin J.A. in Reed v. Lincoln (1974), 6 O.R. (2d) 391 at 401-402, 53 D.L.R. (3d) 14:

‘The cogency of the evidence required to satisfy the burden of proof by a preponderance of probability may vary, however, according to the nature of the issue with respect to which that burden must be met.’

In Hanes v. Wawanesa [supra], Ritchie, J., delivering the majority judgment of the Supreme Court of Canada at pp. 160-1 S.C.R., p. 733 D.L.R., quoted with approval what Lord Denning said in Bater v. Bater, [1951] P. 35, [1950] 2 All E.R. 458 at 459 (C.A.):

‘The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.’

... In Re Dellow’s Will Trusts; Lloyds Bank v. Institute of Cancer Research, [1964] 1 W.L.R. 451, [1964] 1 All E.R., 771, Ungood-Thomas, J., said at pp. 454-5:

‘It seems to me that in civil cases it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but, as Morris L.J. says, the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.’

The conclusion to be derived from the foregoing cases is clearly and, in my view, correctly stated by Professor Cross in his well-known work on evidence, 3<sup>rd</sup> ed. (1967), at p. 92:

‘These words must not be taken to mean that there is an infinite variety of standards of proof according to the subject-matter with which the court is concerned, but rather that this latter factor may cause variations in the amount of evidence required to tilt the balance of probability or to establish a condition of satisfaction beyond reasonable doubt. As certain things are inherently improbable, prosecutors on the more serious criminal charges and plaintiffs in certain civil cases have more hurdles to surmount than those concerned with other allegations.’

To this I would add the words of Cartwright, J. (as he then was) in Smith v. Smith, [1952] 2 S.C.R. 312 at 331-32, [1952] 3 D.L.R. 449:

‘It is usual to say that civil cases may be proved by a preponderance of evidence or that a finding in such cases may be made upon the basis of a preponderance of probability and I do not propose to attempt a more precise statement of the rule. I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be so satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding.’

This passage was adopted by Laskin J.A. (now C.J.C.) in Re Glassman, supra, in the course of a discussion of authorities. It is apparent that the outcome in each case is dependent on a fair and impartial judgment on the totality of the circumstances.

I respectfully accept the conclusion reached by Martin J.A. as enunciating the right approach to the burden of proof in the present case.”

In a more recent review of Ringrose, supra, in K.V. v. College of Physicians and Surgeons (1999), 237 A.R. 49 (C.A.) paras. 26-41, at paragraphs 40 and 41, the Court of Appeal says:

“[40] The essence of the argument of counsel for Dr. V. which remains is contained in paragraph 63 of his factum. It reads as follows:

‘63. It is respectfully submitted that this Honourable Court in Law Society (Alberta) v. Estrin ... and Ringrose v. College of Physicians and Surgeons of the Province of Alberta ... has recognized in principle that an accused

person should benefit from a higher standard of proof when allegations have serious consequences. However, the decision in Ringrose v. College of Physicians and Surgeons of the Province of Alberta fails to describe or identify this higher standard of proof, or provide indication as to when or if it becomes mandatory ... ‘

The citation for Law Society of Alberta v. Estrin (1992), 4 Alta. L.R. (3d) 373 (C.A.).

[41] It is therefore necessary to look again at the standard set out in Ringrose. I have set out above the principles which Mr. Justice Clement accepted. I will repeat only the last sentence which he quoted (at p. 132) from the reasons of Mr. Justice Cartwright in Smith v. Smith & Smedman, supra, at p. 331:

‘I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be so satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding.’ [Emphasis added]

In view of the infinite variety of possible circumstances, I do not think it is either possible or desirable to expand upon this statement.”

A similar conclusion is reached by the Ontario Divisional Court in Law Society of Upper Canada v. Neinstein (2007), 280 D.L.R. (4<sup>th</sup>) 263, at para. 54, affirming that hearings before the Ontario counterpart to this Hearing Committee are not criminal and the panel is not required to assess the guilt or innocence of the lawyer based on the criminal standard of proof, namely, beyond a reasonable doubt.

More recently, the Supreme Court of Canada has reaffirmed that in “civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” C. (R.) v. McDougall, [2008] 3 S.C. R. 41, at paras. 31 and 49:

“[31] In Ontario Professional Discipline cases, the balance of probabilities requires that proof be “clear and convincing and based upon cogent evidence” (see Heath v. College of Physicians & Surgeons (Ontario) (1997), 6 Admin. L.R. (3d) 304 (Ont. Ct. (Gen. Div.)), at para. 53).

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases,

the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”

The burden of proof upon the Law Society of Alberta is to establish the guilt charged against the Member by a fair and reasonable preponderance of credible testimony, the tribunal – the trier of fact and law – being entitled to act upon a balance of probabilities. The cogency of the evidence required to satisfy the burden of proof by a preponderance of probability may vary, however, according to the nature of the charge against which that burden must be met.

In assessing the credibility of witnesses, the Hearing Committee is not required to follow the test set out by the Supreme Court of Canada in R. v. W.(D) [1991] 1 S.C.R. 742 since these proceedings are not criminal: LSUC v. Neinstein, *supra*, at paras. 52-54; also see, Legal Ethics, *supra*, at page 204.

In re Brethour v. Law Society of B.C. (1951) 1 W.W.R. (NS) 34, at 38-39 the Court says that in considering testimony judges ought to be very mindful that the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, or the circumstance that the judge may have remarked favourably or unfavourably on the evidence or the demeanour of a witness; these things are elements in testing the evidence but they are subject to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the times.

In discussing credibility, the British Columbia Court of Appeal in Faryna v. Chorny, 4 W.W.R. (N.S.) 171 expands on this proposition and says at pages 174-175:

“If a trial judge’s finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, see Raymond v. Bosanquet Tp. (1919) 59 S.C.R. 452, at 460. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial judge and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize

as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case."

The assessment of credibility is within the purview of this Hearing Committee and, accordingly, this Committee is charged with scrutinizing the evidence of the Complainant and the Member and the witness. While helpful, corroborative evidence is not a legal requirement. In many cases, including this one, the corroborative evidence may only be marginally helpful given that the most serious incidents alleged took place in private, without witnesses.

The *Legal Profession Act* sets out a general definition of conduct deserving of sanction:

"49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or of the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta."

The interpretation section of the *Alberta Code of Professional Conduct* (section 3(a)) for lawyers, states:

"Conduct deserving of sanction. Under the Legal Profession Act, the Law Society has broad powers to declare conduct to be conduct deserving of sanction and is not limited to disciplining violations that are expressly or impliedly referred to in this Code."

Finally, in Pearlman v. The Manitoba Law Society Judicial Committee, (1991) 84 D.L.R. (4th) 105, Iacobucci, J., speaking for the Supreme Court of Canada says, commencing at page 120:

“The general public has a vested interest in the ethical integrity of the legal profession: see, for example, the remarks of Estey J. in A.-G. Can. V. Law Society of B.C., *supra*. As already mentioned, the provincial legislature has entrusted the protection of this interest to the considered judgment of the members of the legal profession itself.

To my mind, a large part of effective self-governance depends upon the concept of peer review. If an autonomous Law Society is to enforce a code of conduct among its members, as indeed is required by the public interest, a power to discipline its members is essential. It is entirely appropriate that an individual whose conduct is to be judged should be assessed by a group of his or her peers who are themselves subject to the rules and standards that are being enforced. As Monnin C.J.M. recognized in Re Law Society of Manitoba and Savino, *supra* (at pp. 292-3):

‘Our Legislature has given the benchers the right to pass rules and regulations as well as the right to enforce them. It would be ridiculous and lacking in common sense to call upon another body of men and women to hear and dispose of complaints of professional misconduct. Professional misconduct is a wide and general term.’ It is conduct which would be reasonably regarded as disgraceful, dishonorable, or unbecoming of a member of the profession by his well respected brethren in the group – persons of integrity and good reputation amongst the membership.

No one is better qualified to say what constitutes professional misconduct than a group of practicing barristers who are themselves subject to the rules established by their governing body.’  
[Emphasis added]

Throughout, this Hearing Committee has been alive to the fundamental problem in this case that must be explored. There are contradictions in the Complainant’s testimony and evidence and there may be instances of faulty reconstruction. On the other hand, the Member’s testimony may be seen to be self-serving or deliberately exculpatory – it is often completely at odds with the Complainant’s evidence. The testimony, therefore, must be very carefully reviewed to determine

whether apparent discrepancies are such that the evidence of the Complainant or the Member cannot be found to be reliable.

In the circumstances of this case, given the gravity of the allegation found in Citation 2, this Hearing Committee has concluded that it is too dangerous to convict the Member of personal misconduct of the type and nature alleged by the Complainant because, when the Complainant's story is subjected to an examination of its consistency with the probabilities that surround the Complainant's personal history and actual time spent with the Member, it is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and those conditions.

In its totality, the proof against the Member is neither clear nor convincing and, as the allegations against the Member are enormous, so ought the proof to be clear: Hanes, supra, page 5 of this Hearing Report. The gravity of the allegations against the Member become part of the circumstances which this Hearing Committee must take into consideration in deciding whether or not the burden of proof has been discharged.

In short, having considered all of the testimony, this Hearing Committee is not persuaded that the Complainant's testimony has that sufficient air of reality that allows this Hearing Committee to believe her testimony over the Member's testimony or to allow this Hearing Committee to convict the Member of professional misconduct deserving of sanction in respect of his involvement with the Complainant concerning the allegations set out in Citation 2. The Law Society of Alberta has not met its burden.

With some reluctance, however, this Hearing Committee does find the Member guilty of the allegation set out in Citation 1 but with the qualification that the Member's conduct was decidedly inadvertent rather than deliberate and the problem arose from his desire to assist the Complainant, not take advantage of her.

These conclusions will be discussed at length and in detail following.

Throughout, this Hearing Committee has been mindful of the fact that it is a matter of grave seriousness to invoke disciplinary action against a lawyer.

This Hearing Committee is comprised of two practising barristers who are subject to the rules established by its governing body, the Law Society of Alberta. The third member is a highly respected public representative who is not a lawyer, appointed by the people of the Province of Alberta. This Hearing Committee was invited to and has applied its collective life experience and commonsense to this Hearing, as we are entitled to do. We now turn to the evidence and consideration of the specific citations.

## **I. CITATIONS**

There are two:

- (1) IT IS ALLEGED that you failed to serve your client and that such conduct is conduct deserving of sanction.
- (2) IT IS ALLEGED that you engaged in personal conduct which brings the profession into disrepute and that such conduct is conduct deserving of sanction.

1. In order to provide some contextual background to the charges against the Member, it is important to review the evidence given in two days of hearings. There were three witnesses, each of whom shall be referred to as follows:

- a) The birth mother of the Complainant. This witness shall be referred to throughout as “J.P.”;
- b) The Complainant, who submitted a complaint to the Law Society of Alberta on April 30, 2009. This witness shall be referred to throughout as “M.W.”;
- c) The Member, who testified on his own behalf and who shall be referred to throughout as “the Member”.

2. At the outset, LSA Counsel made a brief opening statement. The focus of this hearing would be about credibility and, despite attempts to put together an Agreed Statement of Facts, LSA Counsel said that this case did not lend itself to such a process because the two versions of the facts are completely divergent.

3. In discussing the anticipated testimony of the Complainant M.W., LSA Counsel indicated that the Complainant would be forthright and tell us that she was a young woman struggling with a drug addiction and that she had used the Member as counsel, in the past.

4. LSA Counsel anticipated that M.W. would tell the Hearing Committee that the Member “crossed the line” and became personally engaged with M.W.

5. It was said that M.W. will likely tell us that she was invited into the Member’s home, they used drugs together and the Member propositioned her sexually during that time there. It is anticipated, also, that M.W. will tell us how she was charged with a Criminal Code offence and sought the Member’s advice and will tell you how that resulted in warrants for her arrest and ongoing legal issues.

6. In addition, it was anticipated by LSA Counsel that the birth mother, J.P., is expected to tell us that from a mother’s perspective, her daughter was having difficulties and is

expected to inform us as to her daughter's relationship with the Member and her understanding of the repercussions for her daughter.

7. LSA Counsel indicated that there may be a third witness.
8. The Member indicated that although he had anticipated calling some witnesses, he had now elected not to call any witnesses, other than himself.
9. This Hearing Committee was invited to observe the witnesses as they were presented to us, that we observe the manner in which they testified before us and that we bring our own common sense and life experience into assessments of credibility in this case.

### **J.P.'s Testimony**

10. The first witness called was J.P.
11. J.P. confirmed that she is M.W.'s birth mother and that she had personally met the Member, years ago. She explained that her daughter started dabbling with marijuana when she was about 13 or 14 years of age. That is how J.P. met the Member.
12. J.P. explained that M.W. then got into some trouble with some heavier drugs and was required to go to court on a couple of appearances. At the time, M.W. was approximately 18 years of age and she went to court on two different charges.
13. J.P. explained that her husband left her when she was the mother of five children, she was single for eight years after which she met and married a city policeman. Unfortunately, her second husband was abusive and J.P. left him in 2002.
14. In consequence, M.W. had gone through a lot of abuse from the stepfather and, in addition, the stepfather's two children lived with them, also, so they had seven children, at home, they were both working two jobs and they were both very busy. Her second husband began to drink very heavily and she left him.
15. J.P. relates that this was a very bad situation and when M.W. was 16, she started to go into hard drugs such as crystal meth which was her drug of choice, and cocaine.
16. J.P. is not exactly sure how long her daughter was using crystal meth but it was for about a year, but then cocaine became more of the daughter's drug of choice.
17. In relating how this impacted the family, J.P. says that all the real trouble started after J.P. had left her husband and was living on her own in a condominium. It was a three bedroom condominium. J.P. had five children there so they were all "kind of piled in there" and it was a horrible impact on a family because M.W. was high "and off the wall and it caused turmoil for my other children, and I was trying to keep the house together and I was working three jobs and it was just a lot of stress and so what ended up

happening is I ended up taking out a student loan and going back to college and then it kind of settled down, because I was home more and more stability, I think in the home". [transcript, pages 11-12, lines 25 to end, lines 1 through 10]

18. J.P. explains that M.W. went to live with her father the year of M.W.'s graduation – from the age of 16 or 17. The father lived out at Seba Beach and the father had zero tolerance for drugs. Mom believes that M.W. was smoking marijuana then but she didn't think M.W. was doing any hard drugs.
19. The idea was that M.W. would live somewhere where she had kind of "some control". Eventually, M.W. moved back with J.P.
20. In terms of drug usage, J.P. does not believe that M.W. has used any drugs for some time. M.W. went into treatment from December 4, 2009 to August 13, 2010.
21. This is what J.P. says about the drug use:
  - A. With drugs? I don't believe M.W. used any drugs for - - she went into treatment. We sent her to a wonderful treatment center in Montreal and she was there from December 4th, 2009, until August 13th. She came home last year. She did go out and use again, unfortunately, and I don't be - - I believe now she's been drug free, I would say since probably October last year, I believe she has done no drugs.
  - Q. Okay. At any time did it impact your daughter's mental health?
  - A. Yes. She was in Alberta Hospital twice. She - - yeah, she was very unstable and her sister works at Alberta Hospital, so we both got her admitted. She was in a locked unit twice and they put her on a whole bunch of different drugs and she was like a zombie and it was horrifying, but that was before she went to treatment.
  - Q. All right. [transcript, page 13, lines 2-20]
22. J.P. explains that when M.W. was using drugs, M.W. physically attacked her and assaulted her so there was an assault charge outstanding for which they had to go to Court. (That is when M.W. went to stay with her father.)
23. And then there was another assault charge – on a cab driver. Apparently, M.W. did not have a phone and she wanted to use the cab driver's phone and she threatened to hit the cab driver.
24. J.P. says that the Member was representing M.W. on these two charges.

25. In relating why she thought the Member was representing M.W., J.P. replies that the Member stood up in Court and spoke for her daughter. J.P. says that she saw personally that the Member had stood up and spoken for M.W. She believes that this happened twice but there may have been three times. On one occasion M.W. was ordered to go to Henwood for 19 days and the Member was representing her then. That was when M.W. assaulted the cab driver that she had to go to Henwood.
26. The other charge was when M.W. assaulted J.P..
27. When asked by LSA Counsel whether J.P. was ever present when her daughter and the Member discussed preparation for these assault cases, J.P. replied that she was not present.
28. In stating her knowledge of the Member's representation, J.P. said that it was from seeing him stand up in Court with her daughter and "just things that she told me, but I - - I wasn't there, so ..." [transcript, page 15, lines 24-25] [Emphasis added]
29. J.P. said that she thought the Member wasn't behaving like a professional lawyer with his client but that her daughter spoke very highly of him. Her daughter kept telling J.P. that the Member would help her. In J.P.'s own personal opinion, J.P. felt that the Member was just getting her daughter out of trouble all the time and "I didn't like that". [transcript, page 16, line 4] [Emphasis added]
30. When asked whether there was ever a time that J.P. felt that the relationship between the Member and her daughter changed, she says:
- A. Yeah, I felt that it changed when she got into trouble in 2009 when she got evicted out of her apartment. She was living with her boyfriend at the time. She was going to college. She was working part-time. J. wasn't working half the time, so she was trying to pay the rent, go to college and - - and work, and they got evicted and that's when this whole relationship with Kevin shifted, that I - - I was always leery of him, but then I could see red flags all over the place at that point.
- Q. Okay. Was J. her boyfriend?
- A. Yeah. That's who she lived with and they broke up, yeah.
- Q. Now, please, if you could go into some detail about the time leading up to when - - when you think this relationship changed?
- A. Okay. What happened was M.W. was living with J. They got evicted in March. She did have a court appearance that was coming up. It was a mischief charge. We took - - I took M.W. out, my fiancée and I took her out to look for an apartment and

unfortunately she needed a cosigner. I was on long term disability. I wasn't in a position to cosign for her, so she had phoned Kevin and Kevin was, oh, I'll cosign for you, that's no problem. And my boyfriend and I were like, no, no, no. He's your lawyer. He doesn't cosign your apartment. Something's not right here. Anyways, we took her around and she couldn't get the apartment, so I said you can come and stay - - I live out by Drayton Valley in Alder Flats, so it's an hour and a half each way. There's no work for M.W. out there, and I said you can come and stay with us for a week and just kind of regroup and - - but you have to get a job, you have to get on your own two feet, because at that time, that was two years ago, she's just turned 25, so she was 23. So she came and stayed with us and on our way out to the acreage, her and Kevin were texting each other back and forth and she's in the back seat laughing and, oh, he's so funny and, oh, he's going to cosign for me and all this. And both my fiancée and I are saying, no, this is not right, M.W. He's supposed to be professional. He's an older man. He doesn't cosign for you. Oh, no, he said that he's not my lawyer. He's going to get another lawyer to represent me and so then there's no conflict of interest, and I'm like - - [transcript, pages 16-18, lines 16 to end and lines 1 through 12] [Emphasis added]

31. The testimony was interrupted at that point and the Member confirmed that he had no difficulty if the testimony of J.P. was going in as part of her narrative, not for the truth of its contents. J.P. was allowed to continue her testimony on that understanding.
32. J.P. did not believe that M.W. was using drugs during her eight day stay at the acreage because J.P.'s fiancé was "very tough love" and from previous observations of the behaviour that would cause J.P. to believe that her daughter was under the influence, J.P. related that her daughter would become very flighty and talked really fast and was "just like very quick and, you know, like just not stable. That's when I always knew she was high".
33. In addition, when M.W. was using crystal meth she had cuts on her face and hands.
34. In the process of living with J.P. for eight days, J.P. learned of a place where M.W. could go to live, so that was the arrangement that was made. J.P. took M.W. to this new place; however, because M.W. was using drugs and the property owner ("S.") had two small children that came to visit with him, she was not allowed to stay there. That is when M.W. contacted the Member. [transcript, page 19, lines 24-27]
35. After not being allowed to stay at S.'s, where arrangements had been made, M.W. told J.P. that she was going to stay at the Member's house.

36. J.P. said she “had very bad vibes about it” but she didn’t know what else to do because M.W. was doing drugs again and she couldn’t come back to J.P.’s place. She also said that the Member had already gone and picked up M.W. and M.W. was at the Member’s home at the time that she phoned her mother. M.W. said that she was using the Member’s cellphone to call her mother.

37. In relating what occurred between J.P. and M.W. in that five day duration, J.P. said:

A. And we were in contact for that five days. She did talk to me off and on. I - - she didn’t really go into details what was happening. She just said that she didn’t have to go to court. She was supposed to go to court April 14th, but Kevin said she didn’t have to appear. And I said, oh, I don’t know about that, and I said I want to talk to Kevin myself, so I personally talked to Kevin on the phone. He said I have it covered, she does not have to appear. And I thought, well, that’s from him, so I guess she doesn’t have to go to court. [Emphasis added]

Q. Okay. I’m just going to ask you to back up a little bit. You indicated that your daughter had been charged with another offence.

A. It was a mischief charge.

Q. Do you know about when that was?

A. I think it was the charges where she was at her apartment and she was mad at one of the neighbours. She wanted to use the phone and they wouldn’t let her use the phone, so she threw an egg at their car.

Q. Do you know approximately when that was?

A. Well, she got evicted in March, so I think it had happened just before that. Probably the beginning of March, I think, was when that happened. I’m not really sure.

Q. All right.

A. And it was a mischief charge. She was supposed to be appear April 14th.

Q. She was to appear April 14th?

A. Yeah.

Q. Okay.

A. And then he said she didn't have to appear, so she wasn't worried about it.

Q. Do you recall, the conversation that you had with Mr. Gubbins, where was M.W. when you had that conversation?

A. Oh, I'm assuming she was just in his apartment. I have no idea. She didn't go very far, because she doesn't drive and she was staying in his apartment, so ...

Q. Okay. So when you had the conversation with him, that was during the period she was there?

A. Yeah.

Q. Do you recall when approximately that conversation took place?

A. Well, it was - - like, she was staying with him when she was supposed to appear, in that five days, so it was just maybe a couple of days before that, I think. I think the 14th was on a Tuesday and this was a Saturday I talked to him about it. So it was just a couple of days before she was supposed to appear. [transcript, pages 22-24, lines 15 to end, lines 1 through 14] [Emphasis added]

38. J.P. relates that M.W. stayed with the Member for five days and on the fifth day, M.W. called her up to ask that her mother pick her up right away. J.P. relates that M.W. sounded "panicky".

39. J.P. says that she arrived at the meeting place and was going to get out of her car and go talk to the Member and thank him for taking her daughter for five days "... but this man wouldn't even look at me". [transcript, page 26, lines 21-24]

40. J.P. relates that the Member put his head down and jumped out of his vehicle and got her daughter's things, brought them around to her car and threw them in and then jumped back into his vehicle and drove off.

41. J.P. says: "And I was like, what was that? I was going to thank him. He wouldn't even look at me in the eye. I thought, okay, there's another red flag." [transcript, page 27, lines 1 through 4] [Emphasis added]

42. J.P. then says that after the Member drove off, her daughter is in her vehicle and is sitting on the edge of the seat and repeating "oh, my God, oh, my God, Mom".

43. M.W. said that it was awful and on questioning by her mother, J.P. relates that her daughter went into detail that the Member had brought cocaine into his apartment and that she did this coke with him and that she had a nose bleed for three hours and thought she was going to die. J.P. relates that M.W. told her that the Member was “really weird and that he wanted her to touch his penis and that he called it some name, I don’t remember. It was Peter or something, something whacked. And anyways, that he was watching pornography all this time and she felt like a prisoner in his apartment, because she only had his phone”. [transcript, page 27, lines 12-23]
44. J.P. relates that M.W. told her that M.W. just felt like a prisoner there and the Member was trying to come onto her and she didn’t want anything to do with the Member.
45. J.P. also says: “- - and I knew at that time she was definitely high, because of the way she was acting, and I didn’t want to say to her what are you on, because that would have started an argument with us. So I was just very upset - - and she went on and on just about how horrible it was and she should have listened to me and he was everything I thought he was and - - and he was just a creep. That’s what she called him. A creep”. [transcript, page 28, lines 1 through 12] [Emphasis added]
46. J.P. says that she didn’t know what to do with her daughter so she took her to a women’s shelter and that’s where her daughter stayed for 28 days and the shelter helped her daughter.
47. J.P. says that she had talked to many places about residential treatment programs but nothing was lined up at the time she picked up M.W. J.P. said although she called many places before: “[M.W.] said she was fine, but she wasn’t fine.”
48. On cross-examination by the Member, J.P. told the Member that when he and she had met at the Sherwood Park courthouse, she does recall that the Member was representing one of M.W.’s friends whose name was “A.”.
49. When asked by the Member why it was that the Member stood up for M.W. at the time in the courthouse, J.P. says that she believed that the Member was representing her daughter concerning an assault on the cab driver.
50. The Member states that he was asked by the judge to give independent legal advice to M.W., so it wasn’t as if the Member was M.W.’s lawyer. To this, J.P. said that M.W. had told her mother that the Member was her lawyer and that J.P. always thought the Member was her daughter’s lawyer.
51. Since the date the Judge directed that M.W. attend Henwood for 19 days, J.P. agrees that J.P. had had no contact with the Member whatsoever.
52. And, in the Member’s discussion with J.P. about having M.W. stay at the Member’s place, J.P. agrees that M.W. was not allowed to reside with her mother. Further, J.P.

agreed that the daughter had contacted a brother and sister who had refused to allow her to stay and that she had been told to leave the other property that the mother had arranged for her. [Emphasis added]

53. J.P. does not recall whether it was a Friday or a Saturday that she and the Member talked by telephone.
54. She does recall that it was in April, however, because she remembers the court date was April 14th. J.P. also remembers talking to the Member on the phone about the court appearance that she was concerned about.
55. J.P. recalls that the Member told her that it was a mischief charge and that the Member would take care of it and deal with it and that the daughter had nothing to worry about and that the Member had it covered. “And I said, so she does not have to appear? And you said, no, she does not have to appear.” [transcript, page 35, lines 1 through 5]
56. When the Member asked if J.P. recalled being told by the Member that he could not be the daughter’s lawyer and it would be somebody that he would ask to represent the daughter, J.P. says: “No, absolutely not.”
57. J.P. recalls that on the telephone, the Member was civil and when asked whether he sounded like he had his wits about him, J.P. said: “You sounded like you always talk to me, just kind of - - well, I don’t - - I don’t know a nice way to put it, as cocky, sorry, but very kind of cocky. That’s kind of your demeanour to me.” [transcript, page 35, lines 18 to 21]
58. The Member then questioned J.P. about her daughter’s committal on two occasions to Alberta Hospital. J.P. said that there was a diagnosis of bi-polar and then “they said that she wasn’t bi-polar”.
59. J.P. agrees that M.W. was in a psychotic episode or suffering psychosis when she was put into Alberta Hospital and that is why she was admitted.
60. J.P. agrees that her daughter went out on a rig near Edson or Hinton to work.
61. The issue the Member wished to question J.P. about was whether M.W. had made similar complaints in these different circumstances, and previously.
62. When asked whether or not J.P. was aware of any complaints that M.W. had made to the R.C.M.P., J.P. replied that she had not been made aware of any complaints made to the R.C.M.P..
63. Similarly, J.P. had not been made aware of any complaint made by M.W. to the College of Physicians and Surgeons concerning a doctor’s alleged malpractice.

64. In asking whether M.W. had had any further contact with her former boyfriend after they broke up, the question of relevance to the citations charged against the Member became an issue.
65. The Member said that his line of questioning was going to reflect overall on the credibility of M.W.. After the Hearing Committee expressed concern that this line of questioning was straying well beyond the line of usual cross-examination, the Member terminated his cross-examination.
66. In answer to questions from the Hearing Committee, J.P. said that from about the age of 16, M.W. was using drugs but was not certain about the frequency and, from the age of 16 to 18, she lived partly with her mother and partly with her father.
67. J.P. clarified that M.W. completed her grade 12 year in Seba Beach and it was after that that she had a psychotic breakdown and was placed at Alberta Hospital. J.P. believes that M.W. was 21 at the time and that she was at the Alberta Hospital for about two months for each hospitalization.
68. During her stay at Alberta Hospital, M.W. was heavily medicated. M.W. and her mother went back and talked to the psychiatrist a few times but M.W. was good, she had her own place and she was doing okay.
69. Then, from aged 21 to 23, M.W. was working, had her own apartment and was doing well.
70. At the time of the incident where M.W. “egged” her neighbour’s car, M.W. was age 23, going to Marvel College and she was working part-time and living with a boyfriend, paying her rent, getting high marks in college and was due to graduate that June.
71. From January to March of 2009, J.P. saw M.W. approximately once per week. [transcript, pages 41-43]
72. After picking her up and before taking her to the women’s shelter, J.P. says she probably talked to M.W. for a couple of hours.
73. In relating what it was she decided to do given that M.W. was so upset, J.P. said that she was livid with the Member but didn’t know if she should call the police because M.W. was high so she was worried about that, too. J.P. says she also thinks she was intimidated by the Member at that time and was kind of scared, him being a lawyer, what would happen if she put charges against him. She says: “I didn’t know what - - you know, if he’s unstable and doing cocaine and stuff, I was kind of scared for my own safety at that point”. [transcript, page 44, lines 22-25]
74. In answering questions about the telephone call concerning the court appearance in April, J.P. related again that M.W. had called her to say that the Member had told M.W. that she

did not have to appear for her court appearance. J.P. said that to her thinking, M.W. probably did have to appear and M.W. said, no, the Member had it covered and we don't have to appear and don't worry. J.P. then says: "And so I said, well, I want to hear it from him. I want to talk to him myself and if he says that she doesn't have to appear, then I'll say okay. And that's what he told me". [transcript, page 45, lines 13-16] [Emphasis added]

75. Finally, in answer to the prior court appearances for assault on her mother and assault on the cab driver, J.P. repeated that it was her understanding from M.W. that the Member was the daughter's lawyer for those appearances and, on each occasion, the Member was there in court. J.P. said that on both occasions when she went to court she had expected to see the Member and did, in fact, see the Member.
76. This concluded the testimony of J.P..
77. Although LSA Counsel made a preliminary application to allow J.P. to be in the room during the testimony of her daughter M.W., prior to M.W. starting her testimony LSA Counsel abandoned that application; accordingly, the mother was not present in the hearing room during M.W.'s testimony and cross-examination.

### **M.W.'s Testimony**

78. On direct examination by LSA Counsel, M.W. established that she believed she had a friendship with the Member and had first met him a long time ago when she was approximately 18 years of age when she was at a court date of one of her friends.
79. M.W. is now 25 years of age.
80. M.W. confirms that the Member was her friend's Legal Aid lawyer.
81. M.W. and her friend's grandmother talked very briefly to the Member after the court date to ask about consequences for her friend.
82. M.W. thought the Member was a very nice man.
83. Thereafter, M.W. says she contacted the Member a few times for some questions that she had with legal issues, for advice.
84. M.W. then recounted her personal history. She says that her friend at the court date (A.) was a lot of trouble and she started to get into some trouble with A.. M.W. said that she never wanted to hurt anybody but herself, pretty much, so she "used drugs and stuff". [transcript, page 52, line 17]
85. She started at about 12 years of age smoking marijuana and then at 16 she and A. started smoking crystal meth. She only smoked that for a year and then "I chose cocaine".

86. M.W. says she used cocaine for about a year and when she was 19, it was almost an every day habit and then, when she was 22, her nephew was born and she decided that she didn't want there to ever be a reason that she couldn't see him, so she stopped doing drugs that day.
87. M.W. says she had gone through treatment before that was court-ordered when she was aged 19 which did help her, to the extent that it allowed her to release a lot of "past stuff that I guess I had suppressed". It helped her to look forward, to have a clear mind to the future but she does not think the program was what made her quit. She says: "It was my nephew". [transcript, page 53, lines 13-18]
88. The first treatment at aged 19 was for 19 days, only. The other treatment was called Narconon and it was in Trôis Rivi re, Quebec. About that program she says: "... that program just helped me so much, helped gain a lot of strength back to my mind. Like, I've always been strong-willed, but during my drug use I did develop an illness that seemed to worsen without me continuing to use the drugs. So before - - before that, I'd say that I have been stable since my release from Alberta Hospital". [transcript, page 54, lines 1-8] [Emphasis added]
89. M.W. stayed in the Quebec treatment facility for 8 months, beginning on December 5th of 2009. M.W. denies any relapses.
90. In connection with her Alberta Hospital stays, M.W. says that the first time she was there, she was 19. She had her own apartment and she was making good money doing carpentry and she guesses that her partying got out of control – she smoked some Salvia which she describes as being almost like acid and that's what put her in the hospital. M.W. says she smoked the Salvia and then she just freaked out and smashed everything in her apartment. She was seeing things and she remembers that when the police came she jumped on her furniture like a cat. Then she reports being taken to the hospital and it was a very big eye opener for her "like how what I had could just be taken away. I was there for a month for the first time. Sorry, two months the first time and when I left, I felt - - I felt stable". [transcript, page 55, lines 19-24]
91. When she left Alberta Hospital the first time, M.W. says that she was told that she had been in a drug-induced psychosis. The medications that the hospital had given her were eventually discontinued but were prescribed to help her get control back because she had slipped into a psychosis.
92. After she left Alberta Hospital at aged 19, she went back to work and stayed a little longer in her apartment, alone. After she left that apartment, she moved around a lot and she started using drugs again. About this she says: "There was still the random usage up until I was 22, and when I was 22 my nephew was born and he just - - he was a miracle to me. Babies are - - are magic and I - - I just loved him so much I didn't ever want her to

say I couldn't see him so I - - I decided I was going to grow up.” [transcript, page 58, lines 3-8]

93. Just before her nephew was born she was again hospitalized at Alberta Hospital. M.W. says that there were actually three times that she was in the hospital, twice at Alberta Hospital and the third time at the Grey Nuns Hospital, where she was only there for about 3 days. Although M.W. does not have exact recall, she believes her second stay at Alberta Hospital was also drug-related and she recalls staying there for one month. Again, Alberta Hospital told her that they were dealing with her drug-related psychosis.
94. M.W. relates that the third stay in a hospital was at the Grey Nuns Hospital. She was working on the rigs and she agreed to go in a vehicle with strange men and realized that that was a dumb idea. She became very frightened and she was told that she “had a seizure in their car”.
95. M.W. says that she did smoke a little bit of Salvia with these men and she thinks that that is what triggered the seizure. [transcript, page 60, lines 13-14]
96. These strange men left her in the vehicle and she relates having woken up in the morning. Someone told her that she had started convulsing so the strangers didn't know what to do and they just left her.
97. In answer to how she got to the hospital, M.W. says that the police escorted her out of the rig site. The reason the police came to the rig site is that she had an argument with the cook. M.W. refused to leave on her own accord and told the cook that if the cook wanted her to leave the cook would have to call the police and so “... the cops came - - and took me”.
98. The police took her to the Grande Prairie police station and then told her that she had to stay in a hotel but the one she was dropped off at was all booked up, so she walked around for a while, found another hotel and they said it, too, was all booked. Then she found some guy in the parking lot and she told him she was really cold and asked him if she could stay with him and this guy let her stay at his place. M.W. says he was a very nice guy and when he left he gave her a bus schedule and showed her where the bus stop was and she went to the bus station in the morning.
99. After she took the bus, she ended up in the Hinton Walmart where she had gone in to buy a sleeping bag, because her plan was that she'd sleep in the bus station.
100. M.W. says she doesn't know why she did what she did – it was just a random act – and she pointed her finger like a gun and “I was, like, bang at this guy. And he came running at me and told me that he was a police officer and that was offensive. And I said I was really sorry, I just want to get my things and I'd leave. I ended up trying to run away from him, and he grabbed me and he threw me on the ground and he held me down until the police came, and then the police took me to the hospital in Hinton and then I - - from

there, I took ambulance to Grey Nuns”. [transcript, pages 62, lines 18-end and page 63, lines 1-3]

101. In answer to the question as to whether she was high on drugs, M.W. said that she thinks she was just very, very stressed because she hadn't slept and she wasn't in a strong state – she felt very, very fragile and needed to sleep, so that when she got to the hospital she said to herself that she was safe and she could go to sleep now.

102. She confirmed, once again, that out on the rigs she had smoked Salvia with the guys out there. She confirmed that she stayed at the Grey Nuns hospital for three days.

103. LSA Counsel asked M.W. about her legal problems during this time period. M.W. explains that she had talked to the Member over the telephone and that A. had given the Member's phone number to her and she had just held on to it. She says: “If I ever had any problems or questions, I called him”. When asked what kind of questions or problems she discussed with the Member she said:

Q. Did you have Mr. - - did you meet Mr. Gubbins again? After you met him with your friend A. - -

A. Right?

Q. - - did you meet him again?

A. I had talked with him. I had talked with him over the phone.

Q. Now, how was that that you were talking to him over the phone?

A. A. had given me his phone number and I just held onto it. I just held onto it. If I ever had any problems or questions, I called him.

Q. What kind of problems or questions would you call him about?

A. With - - like, with - - with my mischief charge and stuff. Like, I just - - I called and I asked that he had that dropped for me, but before that, too, there - - we had been in communication about a few things. While I was in Alberta Hospital, I know I contacted him.

Q. So back when you were how - - you were quite young then, right?

A. Yes.

Q. Did you have professional contact with him as a lawyer?

A. Yes.

Q. Prior to your mischief charges?

A. Yes.

Q. Okay. Could you please tell the court about that, or the Panel about that?

A. My understanding is any lawyer, if you're in communication with them about advice or about any kind of legal things, then they are your lawyer. That was my understanding. So I knew that I believe he had spoken to - - when you're in a courtroom, it's the judge - - yeah, the judge, he had spoken to a judge once before for me and so my understanding was he was my lawyer. [transcript, page 64, lines 9 to end and page 65, lines 1-19] [Emphasis added]

104. Questioning then turned to her assault charge on the cab driver when she was 18 or 19.

105. M.W. does not think she contacted the Member after she was arrested on this assault charge involving the cab driver because she remembers that her father was with her. She might have talked to the Member before she went to her father but her father told her not to talk to the Member, as her father was going to help her.

106. The Court matter where the Member was speaking for her, she believes, was the assault charge involving her mother. She remembers that the Member came in and she turned to her father and told him that that was her lawyer and then quickly the Member said something to the judge on her behalf and then said: "I got to go". [transcript, page 66, line 21]

107. When asked whether she had talked to the Member prior to going to Court on the assaults she said: "Any legal matter that I had ever had, I had discussed with him". [transcript, page 67, lines 2-5]

108. She recalls only one time when the Member stood up in Court to talk on her behalf and that was concerning the assault on her mother.

109. M.W. said that the Member spoke to her when she had legal trouble and he gave her good advice. She thought the Member was very smart and she also thought that she had a lawyer: "So, you know, like it was just kind of - - almost like a security feeling, like I - - I won't get in trouble". [transcript, page 67, lines 22-26] [Emphasis added]

110. M.W. says that she had contact with the Member and after the mischief charge happened she and the Member were text-messaging back and forth. M.W. says she always felt that the Member wanted more of a friendship relationship than she wanted but she looked at it like he was a good person and he was helping her, "... so I did have like an affinity towards him". [transcript, page 68, lines 12-16]

111. Their contact was over the telephone.
112. M.W. states that she did tell the Member about her history with drug addiction and mental health issues. When asked if she remembers if she provided any detail about being an in-patient she says: “Yes, my life was an open book to him”. [transcript, page 69, line 4]
113. Questioning then turned to the events of March 2009, which are the events that underlie M.W.’s complaint to the Law Society of Alberta and which form the foundation for the citations brought against the Member.
114. In March of 2009, M.W. says that she was living with her boyfriend and they had lived together for five or six months. The boyfriend was not working and she reported being under a lot of stress as she was going to college and was working full-time and was pretty much taking care of the boyfriend, cleaning up after him and, because he wasn’t working, M.W. and the boyfriend ended up getting evicted from the apartment. Just before the boyfriend gave her the notice – which he held on to for two weeks after it was delivered – she and her neighbour got into a fight.
115. M.W. asked the neighbour if she could borrow her phone and the neighbour said “no”. Then, they had an argument – M.W. says she got mad because it was so mean of her neighbour and then she went outside and cracked an egg on each of the door handles of her neighbour’s car. The next morning the neighbour and her boyfriend were at her door, banging and buzzing her buzzer and threatening her.
116. M.W. says: “So I honestly don’t remember if I called the police or if she called the police, but when the police got there, I said, hey, I did that. I said I was sorry. I offered to clean it up. I offered to pay for a car wash and then I went with the police, I got fingerprinted and they released me with my Promise to Appear, and then the following day, I contacted Kevin.” [transcript, page 70, lines 8-15]
117. M.W. confirms that she went with the police, was fingerprinted and they released her on her own recognizance (“with my Promise to Appear”) and the following day she contacted the Member. She says she contacted the Member because this was a legal issue and she didn’t want to go to court over two eggs. She believed that the Member could have the charges dropped, so she called him and then she remembers crying and telling him her life was falling apart and she didn’t have anywhere to go. The Member gave her assurances that everything would be fine. [Emphasis added]
118. M.W. remembers that she had a joking kind of conversation with the Member and when he asked why she would crack an egg on someone’s car, she kind of laughed.
119. M.W. says that the Member told her not to worry about it right away.

120. When asked what she thought the Member meant by that statement, she said: “That he was going to help me”. [transcript, page 71, lines 22-23] [Emphasis added]
121. After that, M.W. says her father came to take all of her stuff out of the apartment from which she had been evicted and then she stayed with him a while but couldn’t stay there because there was no work for her. She says that her mother was in Sherwood Park so she went and stayed with her mother for a little bit. Then, Mom’s neighbour had extra room in his place so she stayed there but then she just didn’t see that as a really good option.
122. M.W. says: “Like, I just wanted to be in the city, I guess. Like, I don’t know why I didn’t want to stay there. I just didn’t want to stay there any more and I called Kevin again and I - - I told him, like, just everything sucks. For sure is this charge not going to - - like for sure can you help me with this, because I just don’t need extra stress right now. I need to find a place to stay. I need to, you know, start over. And he said, well, where are you going? And I said I have to go to a shelter. And he said, well, why don’t you come and stay with me for a bit? And I was like, I don’t know. And he was like, yeah, it will be fine. Just come here, clear your head.” [transcript, page 72, lines 6-20]
123. M.W. denies using any drugs during the few days she stayed with her father and the approximate one week that she stayed with her mother and she denies using any drugs when she was staying with her mother’s neighbour.
124. In connection with dealing with the mischief charge, M.W. says that the Member came and picked her up from the place she was at, put all of her belongings in his vehicle and she remembers him saying that she had a lot of stuff and she responding “yeah”, she had just lost her place. M.W. says that she stayed in the Member’s household and she was only there for five days.
125. M.W. believes that her court date was on the third day that she was at the Member’s house but she did not want to get on the Member’s nerves because, again, the conversations that they had had, she thought that even though there had been playful jokes in the conversations, she thought they were on a professional level. She didn’t want to irk the Member or make him mad at her because it was such a simple, minor offence and says that she: “... knew he had the ability to get rid of for me, so I believed that that’s what was going to happen. I - - I just - - I trusted him.” [transcript, page 73, lines 24 to end] [Emphasis added]
126. When asked by LSA Counsel whether M.W. actually spoke about her charges with the Member while she was staying with the Member, she says: “Yes, but I was very careful with how my wording was with bringing it up. I know you’re really busy, but I just wanted to remind you, you know, that my court date’s coming up. Are you sure that I don’t have to go?” [transcript, page 74, lines 3-4 and lines 6-8]
127. M.W. says that the Member’s response was: “I told you, I’ve - - I’ve called. I’ll have it taken care of. I’m waiting to hear back from this person. I’m not going to represent you,

but I've - - I've been trying to get a hold of this guy. I've talked to this guy, he hasn't got back to me. So it wasn't really straight answers". [transcript, page 74, lines 10-15]

128. This is the next exchange between LSA Counsel and M.W.:

Q,. So please tell the Panel a bit about that. Mr. Gubbins indicated he didn't want to represent you. What was that about?

A. It wasn't - - he never, like, said I want a relationship or I want you to - - it was - - everything was on - - along the lines of why don't you just stay with me, why don't you just be - - be my wife? You don't have to marry me. You don't have to have my kids, but if you want a baby, like - - it was like that.

Q. And was all that type of conversation just taking place while you were staying there or prior to you going there?

A. Mostly as soon as I walked in the door.

Q. Okay.

A. If it was - - I felt the - - inappropriate, if I felt there was inappropriate stuff before I had gone there, I would have gone right to a shelter, but I trusted him.

Q. Okay. So Mr. Gubbins indicated he didn't want to be your counsel?

A. Right.

Q. Okay. Did he say anything about helping you find a lawyer?

A. Yes.

Q. Please tell the Panel about that.

A. He gave me another lawyer's name, which I had heard before in the past. So I was like, okay, I've heard of this person. I just assumed that maybe he was a friend of his and that he was going to do Kevin a favor, because this was my - - my case that I had given to Kevin and so I thought Kevin was just passing it off so me and him could have more of a friendship.

Q. Okay. Did he give you the contact information for this lawyer?

A. No, and I did ask for it a few times.

Q. And what was the response when you asked for contact information?

A. You don't need it. You don't worry about it. It's okay. I'm having it taken care of it. It will all be okay.

Q. Okay. And was it?

A. I was nervous that it wasn't, but I had hope that it would be.  
[transcript, pages 74-76, lines 16 to end and lines 1-6 inclusive]  
[Emphasis added]

129. Questioning then turned to M.W.'s stay at the Member's house. M.W. says that the Member picked her up when it was dark outside, they stopped at a gas station where the Member bought her cigarettes with his own money and the Member said he did not want to be repaid, it was fine and nothing to worry about.

130. They arrived at the Member's property and no one was there, besides the dog. The Member said that M.W. could put her stuff in the basement so she took it downstairs and then looked around and realized there was somebody else living there. She asked whether it was okay to leave her stuff in that area and the Member said it was, so she left it there for the night. M.W. thinks that the next day the Member's roommate told the Member that he did not want her staying in that area, so she slept on the couch upstairs on the main level and brought all her stuff from downstairs back upstairs.

131. M.W. said she was really sad because she was ending a relationship with somebody and she had just lost her apartment. She had to drop out of school and had to quit her job. It was all hard. She says that she thinks she was "pretty much in shock when I was there".  
[transcript, page 77, lines 26-27]

132. M.W. said she was trying to pick herself up and tell herself that sometimes there were hard times in life and you just had to get through them. She was telling herself that she had been in worse condition and in worse circumstances.

133. When asked about what she did while she was at the Member's property, the following exchange occurred between LSA Counsel and M.W.:

Q. What happened while you were there?

A. Didn't eat much. Did a lot of cocaine.

Q. Who did?

A. Me and Kevin.

- Q. Where did it come from?
- A. Kevin had a contact for it, so he called and had it delivered.
- Q. Do you remember how long into your stay there that that started?
- A. Right away. I am not a hundred percent if it was the night that I got there, but I know the next day it was as soon as the bag was empty, there was another one on the way.
- Q. Okay. Did you see Mr. Gubbins using the cocaine?
- A. Yes.
- Q. Approximately how often?
- A. It was a lot. Very often.
- Q. What about yourself?
- A. I cut myself off. I - - I just remember that like my nose clogged right up and I was - - like I was - - I was trying to open my nostril with a cue tip [sic] and I couldn't even put a cue tip [sic] in my nose. It was just everything was swollen. And then I just started with that's garbage and you shouldn't do it and it's kind of a waste of money and I was very - - I was very harsh. Very harsh about it.
- Q. How long did you use with Mr. Gubbins?
- A. It was - - I believe it was the first night that I got there, the second day and second night, and then the third day, I cut myself off.
- Q. Okay. Was Mr. Gubbins primarily at home during that time or not?
- A. He was in and out. He was for the most part there, but I remember that the day of my court, he had to go to court.
- Q. Okay.
- A. And so I believed that he was - - he was going to take care of my issues.
- Q. Okay. Do you recall if you spoke to him after he got home that day?

A. Yeah.

Q. Do you remember if you spoke about your court date?

A. I didn't, because I knew that if he lied, then there was nothing I could do to - - to - - nothing I could do about it. So after that I didn't bring it up, because if I had missed it, there's nothing you could do, right? Like, I was in his house. I was - - I didn't want him to just boot me out. So for me to bring it up I thought would almost be questioning - - you know, I thought it would just make him mad. Like I said I would do this, why don't you believe me? And at that point, I just felt like I won't - - I can't stand up for myself until I leave and I'll find out after I leave. [transcript, pages 78-80, lines 7 to end and lines 1-8 inclusive] [Emphasis added]

134. Following this exchange, LSA Counsel asked whether the nature of M.W.'s relationship with the Member changed at all while she was there.

135. M.W.'s response is as follows:

A. It was clear that he wanted more of a friendship with me. He wanted - - he wanted to have sex.

Q. How do you know that?

A. Just little comments, little comments that were made that were quite vulgar.

Q. I know this is difficult, but could I ask you, do you recall any of the comments specifically?

A. Yeah. When I was there, I didn't really go upstairs because that was where his bedroom was, but the very couple - - like I only went up there a couple of times and he had told me like, oh, you walked in on me while I was - - while I was jerking off, or I'm going to sleep, come help me fall asleep.

Q. Were there any comments that suggested that he wanted to have a sexual relationship with you?

A. Yeah, just he had told me, too, that he had a house in Costa Rica and he showed me a picture of it on the internet and he said that I could go there with him. That I could go there. And, again, I didn't have to be his wife, but I could play wife. He would take care of me.

- Q. Did that impress you?
- A. No, I definitely was like, oh, wow, good for you, that's awesome. Like, that's a nice house, it's very cool, but it didn't phase me at all. You know, like I just - - I had no - - I didn't want to be there. I wasn't intrigued. I wasn't - - I'm not somebody that can be bought or manipulated with money.
- Q. Was there anything else that caused you to not want to remain there?
- A. His roommate. His roommate had made it clear to him that he didn't want me there.
- Q. Okay. Is there anything else you observed about Mr. Gubbins' behaviour while you were there? What did he spend his days doing?
- A. It didn't like appear a lot, but he was a nice guy. Like he - - he - - he was a nice guy that was helping me, but he was also - - I don't know. I just - - I think that he knew that I was getting uncomfortable, but then eventually he knew that I'm not somebody that can be manipulated.
- Q. Was there anything else of a sexual nature that was going on during those days?
- A. No. [transcript, pages 80-82, lines 11 to end and lines 1-2 inclusive] [Emphasis added]

136. LSA Counsel then referred to Exhibit 6 which is the complaint to the Law Society of Alberta. M.W. confirmed that she wrote that during the time that she was staying in the women's shelter. The date April 30, 2009 is written at the bottom of the statement and M.W. confirms that she wrote the statement when she had a fairly good recollection of events, that she had had a chance to review the statement and confirms that it is accurate as to what took place, including her statement that the Member was watching pornography while she was in his house.

137. M.W. recalls that she saw – as she was walking by – pornographic images that were on his laptop computer: “I had seen, you know, like a little bit of it and I was like, oh, well, that's wrong. And I was very blunt with my views ... and I was like, oh, well, that's wrong, my - - my views on it. And I was very blunt with my views, but those are my views.” [transcript, page 83, lines 24 to end]

138. M.W. says that she left because the Member's roommate didn't want her there anymore and because she wanted to get out of there the whole time she was there. She said that she didn't want to go to the shelter, she wanted to find some other option and it didn't happen, so she ended up going to the shelter. Other than as related above, M.W. says nothing else of a sexual nature was going on during those days she stayed at the Member's house.
139. In connection with trying to find an apartment, M.W. relates that the Member offered to "cosign" on a lease for her because she had told him she did not have good credit and she didn't know where else to turn. M.W. says that she told her mother about this and her mother indicated that such an offer was not professional and it was wrong and something was not right about offering to cosign for her. M.W. admits that this caused a little bit of concern on her part but she also accepted that it was help and if she didn't have any other options, then she was going to take the Member's help. [Emphasis added]
140. M.W. thinks that the Member just told her one day that she would have to go and she said that was okay, packed up all her things, threw them in his truck and left. The Member said that his roommate didn't want her there anymore. M.W. also thinks that the Member did not like her attitude and how blunt she had been and she thinks she may have hurt the Member's feelings.
141. M.W. reports that she was blunt about:
- A. The porn. Like I said that that was - - it was meaningless sex and if you watched meaningless sex, then you'll never have anything meaningful; cocaine, how it was garbage and he was better than that and I don't understand how he can function doing that much blow.
  - Q. Did you ever accept any of Mr. Gubbins' advances?
  - A. Could you be more specific?
  - Q. Sure. Did you ever - - you indicated that there was some comments that suggested that he wanted to have a more intimate relationship with you.
  - A. No, I never gave him any indication that it could have been at all. I was very blunt with it's not going to happen.
  - Q. And did it happen?
  - A. No. [transcript, page 86, lines 12 to end]
142. When her mother picked her up M.W. relates that she was in a state of confusion and she didn't know whether she was still high or under the effects of the cocaine that she had

used but she said that her head was really cloudy, really heavy. She related that all the swelling in her nose made her head really, really heavy and she remembers being mean to her mother. She knew that her mother was there to help her and she was mean to her because her mother wouldn't let M.W. stay with her.

143. M.W. stayed at the women's shelter for about a month and then she says that she got an apartment and a job. [transcript, page 88, lines 4-8]
144. M.W. says she got the apartment and got a job "and I had that place for - - for a while." When the landlady asked her for a criminal record check, she consented and went to get the criminal record check for the landlady. [transcript, page 88, lines 7-8]
145. Then when asked whether any document was required for the apartment, M.W. says the landlady when told by M.W. that M.W. didn't have very good credit, the landlady asked for a criminal record check and M.W. said that she would get a criminal record check for the landlady. [transcript, page 88, lines 11-15]
146. M.W. contacted the Member and asked him if she could get the criminal record check and asked him whether if she went in to the police station was she going to get arrested. She reports that the Member said to her: "It's good that you don't go. It's good that you called me. He said, I'll get a - - I'll get a copy of it for you and then I'll come and bring it to you". [transcript, page 89, lines 3-6]
147. M.W. says that prior to her call of that date the Member had not called her about a warrant for her arrest – although she had been receiving other telephone messages at the shelter.
148. Again, M.W. states that the Member told her that he would get her criminal record check for her and then he would bring it to her so that she didn't have to go to the police station.
149. M.W. says that she was first made aware that there was a warrant out for her arrest on the same day that she talked to the Member about her criminal record.
150. The Member did not provide a criminal record check although M.W. states that they planned to meet after he was out of court – she was supposed to call him so that they could meet and he could bring the criminal record check to her.
151. The Member did not advise her to turn herself in on the arrest warrant.
152. The Member did not bring to her the criminal record.
153. M.W. went and got the criminal record herself from the police station that was close to where she was staying.

154. The policeman told her that warrants take two to three weeks to be put into the system so if an arrest warrant had issued it would not be recorded yet, so they could release the criminal record check for her.
155. M.W. got the apartment. It was thereafter that she was arrested under the arrest warrant and was put into a holding cell.
156. It was some time after this that she went to Quebec for treatment. She denies using drugs after she left the Member's home but said that she went into treatment because she "started drinking a lot". [transcript, page 93, line 24]
157. M.W. says that her family sent her to treatment not because they thought she was struggling, so much as they wanted to make sure that she wouldn't struggle in the future. Her family wanted to end her struggle so far that she had had and rebuild her strength so she wouldn't struggle again. This was in 2009 and M.W. was aged 23.
158. M.W. confirms that her nephew was born when she was 22 and she said that she didn't use then. M.W. then says:
- Q. Okay. And how old were you during the time period that you stayed with Mr. Gubbins?
- A. It was '09, so 23.
- Q. Twenty-three? Okay. Now, earlier you indicated your nephew was born when you were 22 and you didn't use then.
- A. Like, when I was 19, it was a every-day habit and then there was, like, random usage up until that point.
- Q. Okay.
- A. And after Kevin's house, I didn't - - I didn't touch cocaine. I randomly smoked some marijuana and I - - I was drinking. [transcript, page 94, lines 8-20]
159. M.W. said that at this time [June 2011] she is doing very well, that she has a little puppy and that she is returning to college in September. She says she continues to work at a bar and she doesn't drink much anymore and she is re-connecting with her family. She says: "I got nothing to look forward to but the future". [transcript, page 95, lines 3-4]
160. That concluded the questioning by LSA Counsel of the Complainant M.W.
161. Commencing with cross-examination by the Member, M.W. acknowledged that she was still under oath.

162. M.W. confirmed that she and the Member had first met five or six years ago at the Sherwood Park provincial courthouse, that she had not retained him and neither had Legal Aid retained him, to be her lawyer.
163. The Member asked whether the time that the Member “stood up for her”, if that was at the insistence of the judge that was there that day.
164. M.W. does not recall that it was at the judge’s request; rather, she says that it was at her request. She says that her matter was taken care of: “It was dropped”. [transcript, page 99, lines 9-10]
165. M.W. concedes that she believes that the Member was in court that day, already, and that subsequent to that time in court there had been contact via telephone over the years.
166. M.W. concedes that the contact by telephone was “seldom” and that it primarily revolved around issues that M.W. was going through at the time. [transcript, page 100, lines 6-8]
167. M.W. recalls calling the Member after the Edson or Hinton incident and telling him that a security guard had broken her wrist.
168. This call about the security guard occurred before she had discussions with the Member about the mischief charge.
169. Before she had discussions with the Member about the mischief charge, also, she had called the Member on the telephone to talk about suing a doctor for medical malpractice.
170. M.W. confirms that she never sued the doctor over the malpractice and she never sued the security guard or had the security guard charged.
171. M.W. confirms that these incidents were during a time when things were not that stable in her life.
172. Thereafter, M.W. called the Member regarding a mischief charge.
173. M.W. confirmed that this incident had taken place some time in March of 2009.
  
174. This exchange then occurs at page 102, commencing at line 14:

Q. Okay. And do you recall - - do you recall me advising that I could not represent you?

A. No.

Q. Do you recall me saying that because I had known you, that I would not be able to be your counsel?

A. Yes, eventually. [transcript, page 102, lines 14-19]  
[Emphasis added]

175. The Member then asked M.W. if she recalled whether or not the Member had advised that he practised mostly in Grande Prairie and he did not do much work in Edmonton and she acknowledges she does recall the Member telling her that.
176. M.W. agrees that she recalls giving the Member the date that she was to make her first appearance on the mischief charge. She says that it would have been a month after the incident, so in April of 2009. She says that she had her dates right when she wrote her letter to the Law Society of Alberta [on April 30, 2009].
177. When asked by the Member if she got that date from her Promise to Appear, she said that this is where she got the date and that there was also a fingerprint date on that document.
178. When asked if she got her fingerprints done, M.W. said that she believes that she did have her fingerprints done again in relation to the mischief charge.
179. When asked if the fingerprinting would have taken place about one week before her first appearance, M.W. said that this was not correct because her fingerprints were done the day of the actions. She says the police came the day she had cracked the egg on the girl's car and she went with the police and she got fingerprinted right away.
180. M.W. remembers that the Member gave her the names of two lawyers, and one of them was "Akram". When asked if she remembers if this was Akram Attia, she says she just remembers "Akram".
181. She also recalls the name of the other lawyer who was Kevin Lieslar. [transcript, page 104, lines 9-21]
182. M.W. does not recall the Member giving her the office numbers for these two lawyers and she does not recall the Member telling her that Mr. Lieslar worked out of the same office that the Member had been working out of, in Edmonton.
183. M.W. believes that it was on April 10th that she thinks she got in communication with the Member about having no place to stay and it was on April 12th that she was at his house, the court date being on one of the five days that she was in the Member's house.

184. M.W. believes that the Member was in town that day: “Otherwise, you would have not come and picked me up.” [transcript, page 106, lines 12-14]
185. M.W. cannot remember whether it was a Thursday or a Friday but it was dark when the Member came and got her.
186. During her stay at the Member’s house, which she says was until April 17th, she does recall that the Member went to work in Edmonton because that’s what the Member told her. This exchange occurs at page 107, commencing at line 12:
- Q. Did you recall whether or not I went to work in Edmonton or if I went to work in Grande Prairie?
- A. You went to work in Edmonton. That’s what you had told me.
- Q. So you think it was a Monday or a Tuesday that I had gone to work and come back?
- A. It was my court date. The date of my court, I was like, well, you’re going there, so I just assumed that you had other matters that you had to go for, but mine was going to be - - you were going to be there for me.
- Q. Did you ever contact Mr. Attia or Mr. Lieslar?
- A. No. [transcript, page 107, lines 12-24]
187. M.W. agreed that it was pre-arranged that she be dropped off to see her mother.
188. When asked whether the whole reason why she could not go see her mother in the first place was because the mother did not want M.W. at home after what had occurred in Sherwood Park, M.W. disagrees. M.W. says that the reason that she couldn’t stay with her mother was because there was “... no work and it was tough love situation”. [transcript, page 108, lines 8-10]
189. M.W. also says that she made attempts prior to or as soon as she arrived at the Member’s house to see if she could go back to live with her mother. M.W. also agrees that her mother said that M.W. could not come back and live with her.
190. In explaining herself further, M.W. said that she couldn’t stay with her mother because she had a full house at the time, in that her little brothers were there with her mother. M.W. said that they didn’t want her to move in there and it was also a tough love situation.

191. M.W. agrees that she also asked a sister and perhaps a brother if she could stay at their places and she also asked a couple of friends the night that she arrived at the Member's house if they could come and pick her up and if she could stay with them. She says that the whole time she stayed with the Member she was trying to find somewhere else to go.
192. M.W. agrees that she was using the Member's phone because her phone wasn't working.
193. M.W. agrees that staying with the Member was only a temporary situation because she didn't want to go to a shelter. She also agrees that the Member encouraged her to try and find some place else to stay. M.W. was on the phone to lots of people.
194. M.W. also agrees that she knew that the Member actually did most of his work and resided primarily in Grande Prairie.
195. M.W. believes that the Member mentioned this as a reason as to why he wanted to give her another lawyer. [transcript, page 110, lines 4-21]
196. When asked whether this was also a reason why M.W. wouldn't be able to stay at his place any longer than the Monday or the Tuesday, M.W. said that it was the roommate's decision and that is what the Member had told her – because the roommate didn't want anybody else in the house.
197. The questioning then shifted to the Member asking M.W. whether she recalled when it was that she found out that she had a warrant out for her arrest. She said that she was in the shelter at the time she found out. As to how she found out, she indicates that she contacted the Member and asked him if a warrant had been issued, to which the Member said that he was not sure: "... but I was a smart girl for not going to check and you would get my criminal record check for me". [transcript, page 111, lines 8-10]
198. At page 112, the Member asks:
- Q. Do you recall approximately how much time had passed between your first appearance, which was the 14th of April as you say, to the date that you say you found out that you may have a warrant?
- A. Okay. April 14th was when I was charged and my appearance would have been March. Do I recall?
- Q. Well, you indicated that you said I was the one who advised you that you might have a warrant.
- A. Right.
- Q. Okay. And you said that happened at the shelter.

- A. Right.
- Q. And you said that happened approximately how long after when you were supposed to appear for court; do you recall?
- A. Yes, if my court date was March 14th, then I was in the shelter March 17th and it was about a week before I went out on foot to find an apartment, and so about a week after my - - my court date.
- Q. Okay. So about a - - about a week after your - - the 14th of April. Do you recall if you went to the courthouse and talked to a court clerk?
- A. No.
- Q. Okay. So you never went to the courthouse and spoke to a court clerk and found out you had a warrant?
- A. No.
- Q. Okay. Do you recall getting any messages from me after the - - sorry, after the 21st, at the shelter?
- A. No.
- Q. Did you have any contact with me after you found out that you thought you had a warrant?
- A. No. After I asked you if I had a warrant, after you didn't bring it, that was it.
- Q. Just go back to the criminal record check for a second. That was done in relation to because you wished to get a - - an apartment, correct?
- A. Yes.
- Q. And do you recall me giving you advice that you should wait to see your disclosure, paperwork from the Crown's office?
- A. I don't, no.
- Q. Do you recall a conversation where I advised that if you were doing a criminal record check privately, it would cost you money?
- A. No.

Q. Do you recall that as part of your disclosure to your mischief charge, if you had criminal record, that would be produced for you? Do you recall me saying that to you?

A. If I had a disclosure?

Q. Because of your mischief charge, you get disclosure, which is the court package.

A. Right.

Q. And that I advised you whether, if you recall - - do you recall me advising you that if you had a criminal record, that would be indicated in that disclosure package?

A. I don't recall that, I'm sorry.

Q. Because you don't recall it, does that mean that you were never told about that or you just don't recall?

A. I just don't recall. [Emphasis added]

Q. Do you recall whether or not I was in Edmonton during those phone calls or if I was still up in Grande Prairie?

A. I have no idea where you were. There was a guy that talked to the judge, I can't remember what his title is, but his name was Doxon (phonetic) or Dixon (phonetic), and he did speak on my behalf, too. I just can't remember his first name, but I think you had asked me about some counsel for me and that is the name that is in my - - that's the name that I remember, but - - and that's when I was on - - I got my Alternative Measures Program.

Q. So you were ultimately approved for Alternative Measures?

A. Yes.

Q. And you indicate, do you recall me speaking to you or even your mother or in the presence of both of you, about the Alternative Measures Program.

A. No.

MR. JACQUES: About what, sorry?

MR. GUBBINS: The Alternative Measures Program.

Q. MR. GUBBINS: Do you recall me every telling you about having to do some community service in order to get the charge withdrawn?

A. Yes.

Q. And you don't recall that being called the Alternative Measures Program, or AMP?

A. I do remember you saying that I had to do community service and I remember not being happy about it and asking why it was necessary.

Q. And you wished the charges to go - - to go away, correct?

A. Yes.

Q. And the rationale for that, my understanding is because you had offered to pay for the person's car wash?

A. I sincerely apologized before the police even came. I offered to clean it up. I turned myself in. I feel I took responsibility for my actions and I didn't want there to be any further consequences.

Q. And do you - - do you recall - - and you relayed that to me. Do you recall that, saying that to me?

A. Probably.

Q. And do you recall me every giving you any information about the fact that now that it's already gone into the court system, that that wasn't likely to happen?

A. Yes.

Q. Did you recall me every telling you how long it would take to see if you would qualify for that program?

A. No.

Q. Do you recall me every advising you about what the standing procedure is for those types of matters?

A. I vaguely remember.

Q. Okay. Do you recall that I would have told you it would either have to go over for two weeks or six weeks to see if you were approved?

A. I don't remember those words, but - - I don't remember those words coming across to me, but I remember that you had said you were going to appoint - - that somebody else was going to be doing this. You couldn't - - you didn't want to do it. Somebody else was going to, to represent me.

Q. Okay. And you gave me - - and you do recall me giving you two names?

A. Yes. [Emphasis added]

Q. But you don't recall me giving you any contact information.

A. That's correct.

Q. Do you recall yourself asking for specific cell phone numbers, I - - with respect to those two individuals?

A. Yes.

Q. And you recall me not giving you those specific cell phone numbers, correct?

A. That's correct.

Q. But you did not recall me giving you their office numbers and how to contact them.

A. You did not give me any information or I would have contacted them myself.

Q. You - - you don't recall, but you do recall the names that I gave you, as well?

A. Yes. [transcript, pages 112-117, lines 5 to end and lines 1-23 inclusive] [Emphasis added]

199. The Member then turns his questioning to asking whether M.W. ever cooked at his house and questioning her about whether she believed it was for five days that she stayed at the Member's house or whether it could have been less.

200. M.W. says that she knows that it was five days because she talked to a friend of hers and remembers describing to the friend that it was “a pretty weird five days” and “I know that it was the third day that I was there that was my court date”. [transcript, page 118, lines 18-20]
201. M.W. agrees that she slept during this period of time on the couch downstairs and that she was in possession of the Member’s cell phone all five days but remembers giving it back to him the one day that he left for court.
202. M.W. says that she is 100% sure that it was the third day that she was at the Member’s house that he was supposed to be in Court for her. When the Member asked whether she asked the Member what had happened in court, she said: “I just assumed that you were going to keep your word and that I didn’t have anything to worry about”. [transcript, page 119, lines 14-16]
203. M.W. agrees that she never asked the Member what happened or what had occurred in court, until she called the Member to ask if there was a warrant out for her arrest and he said that he was not sure but he would find out.
204. Based upon that conversation, M.W. says she assumed that there was, in fact, a warrant out for her arrest.
205. M.W. said she did not go to the courthouse to go and find out if there was a warrant; she went to the police station and asked and “... luckily I went before it had been issued”.
206. The Member asked whether she went to the police station before the warrant had been issued or did she mean that she went there before it had gotten into the system, to which she replies at page 120, lines 8-12:
- A. The policeman’s words were - - the police officer’s words were it takes three weeks to issue a warrant, so if one has been issued, if that was your court date, it hasn’t gone into our systems yet.
207. The Member then asked whether M.W. was living at a women’s shelter or at an assisted living place. M.W. replied that it was at a women’s shelter and that she did not get any messages from the Member to call him.
208. M.W. agrees that for the period of time up until she went for her treatment in Quebec, her life was fairly unstable, that she is currently taking no medication and that since her last stay at the Grey Nun’s hospital she had been under no doctor-prescribed medication for mental health issues.
209. In questioning M.W. about her mental state and how that might affect her recollections, this exchange occurs commencing at page 123, line 11:

- Q. Would it be fair to say, though, that even after the Grey Nuns, life wasn't very stable?
- A. Life was hard.
- Q. Just overall in terms of recollections, would it be fair to say that much - - some of what has occurred in your past has been say influenced by your mental state?
- A. I'm sorry?
- Q. Your recollections of what has occurred in your past, would you - - would it be fair to say that much of that has been coloured by your mental state?
- A. What do you mean by be coloured by?
- Q. Meaning that some things that you may recall may not have happened, some things that haven't happened, actually did happen. Just basically understanding what has occurred in - - in your past.
- A. No. I believe that my memory might be somewhat vague due to there's a portion of the Narconon program that I had to go through, and in there I did get pretty sick again, pretty mentally sick. I lost a lot of weight. There was a huge fluctuation in there. I went down to 114 pounds, I went up to 128 pounds. Once you feel you're stable in there, then you're allowed to proceed with the rest of the program and it took me two months in there to feel stable again. So there was quite a - - it was pretty hard on my body, but I have a very good - - a very good memory of - - of everything like in my past, of everything that has happened with this. It did - - I did, you know, put some shutters up for a while and I didn't want to look at it or remember it, but as soon as I felt I was ready, that's what I've been trying to do, so ...
- Q. So you don't believe that your memory of - - of events has been changed or altered because of what's gone on in your past?
- A. No.
- Q. I think those are all my of my questions. [transcript, page 123, lines 11-end and lines 1-24 inclusive]

210. LSA Counsel re-examined M.W..

211. M.W. says that she had kept her Promise to Appear with her important documents in an old plastic cigarette container but, with her moving, she had lost some stuff. She only recalls the date from memory and that she had mixed up the April and March dates, being that March would have been the mischief act and then April 14th would have been her appearance.
212. M.W. agrees that she was under the impression that until such time as M.W. was in contact with another lawyer, the Member was looking after the mischief charge for her.
213. M.W. then repeats that insofar as the contact information was concerned, it was not given to her although she had asked and asked for it.
214. In questioning by the Hearing Committee, M.W. says that the Member was there for the assault charge against her mother. M.W. agrees that she had not gone to Legal Aid and she did not get a lawyer through Legal Aid. She says, at page 128 commencing at line 20:

Q. Well, had you gone to Legal Aid and got a lawyer through Legal Aid?

A. No, it was - - it was just because I had his contact information for so long, I had just called him about - - about any problems that I had with these charges and like it was all - - the only reason that I ever contacted him was for - - because I had questions regarding legal stuff. [transcript, page 128, lines 20 to end] [Emphasis added]

215. M.W. says that she was expecting to see the Member there that day and then says:

Q. Okay. And on the other occasion with the assault on the cab driver, did you have a lawyer?

A. My Dad was with me and I believe that my Dad - - I honestly - - I just can't remember if he was there for both. I honestly believe he was there for both of them.

Q. Okay.

A. I don't remember.

Q. Thank you. Mr. Gubbins, you mean, or your Dad?

A. Mr. Gubbins.

Q. So you didn't - - you didn't have any other lawyers?

A. That's correct. [transcript, page 129, lines 5-17]  
[Emphasis added]

216. In answer to questions about what the Member said in terms of an ongoing relationship, M.W. says:

A. Like, he never said - - he said I could play wife, is what his words were. I could play wife. I didn't have to be his wife. I didn't have to marry him, but if I wanted a baby, like it was kind of like I want one, too. [transcript, pages 129-130, lines 25 to end and lines 1-2]

217. M.W. is somewhat confused about when the Member left for work and when the Member returned but believes that he left one day late and came back the next day; so M.W. believes, he could very well have gone to Grande Prairie and have come back in that time. M.W. remembers being in the Member's house when he wasn't there.

218. M.W. recalls that in connection with the warrant for her arrest on the mischief charge, she turned herself in although she could have said that she hadn't done anything. M.W. said she felt badly about what she had done to her neighbour.

219. M.W. was confused about a warrant for failing to appear.

220. When asked by a Panel Member about whether she had been arrested on an April 2009 warrant and spent a little time in detention but not overnight, M.W. said that she doesn't remember and asked: "Why did that happen? I don't remember, I'm sorry". [transcript, page 131, lines 23-24]

221. This concluded the examination of M.W..

222. Prior to a brief adjournment, LSA Counsel indicated that all exhibits were sent in advance to the Member and the Member objected to nothing before the deadline, asking that all exhibits be marked in full, with one minor exception.

223. Part of Exhibit 13 at the third to last paragraph on page 2, is opinion evidence which is clearly inadmissible.

224. Clarification about the deleted, inadmissible portion was given:

THE CHAIR: Just that so I'm clear, there are two sentences in the third paragraph. Is the entire paragraph to be disregarded by the Panel or is it the first sentence only?

MS. DAVIS: My application would be it would just be the first sentence. Contained within the interview is Mr. Gubbins' admission that he'd used cocaine, in any event.

MR. GUBBINS: Correct.

THE CHAIR: And that's agreeable to you, Mr. Gubbins?

MR. GUBBINS: That's fine, yeah.

THE CHAIR: All right. The - - then, Madam Court Reporter, to be clear, all of the exhibits, Exhibit numbers 6 through 14, are now entered as exhibits with one qualifying remark, which is as at - - which is at Exhibit 13, the sentence that appears as the first sentence in the third-from-last paragraph on page 2 of Exhibit 13 will be disregarded by the Panel and will, in fact, be deleted from the exhibit on the - - with the agreement of counsel for the Law Society and Mr. Gubbins? Is that clear?

THE COURT REPORTER: Yes. [transcript, pages 133-134, lines 23 to end and lines 1-19 inclusive]

225. In further clarification by a Panel Member, the transcript from Exhibit 13 is not clear and may not be accurate. LSA Counsel agrees that it is an oddly-worded sentence and that LSA Counsel is happy to take that oddly-worded phrase out also "... because there's no suggestion that Mr. Gubbins consumed - - admitted consuming alcohol or cocaine during his time with [M.W.]". [transcript, page 136, lines 8-10]
226. In the end result, the question about whether or not the Member had ever used cocaine does not relate to this complaint and it shall be left to read: "I did ask Mr. Gubbins during the interview if he had ever used cocaine and he answered - "yes". [transcript, page 136, lines 24-26]
227. The hearing then adjourned, at the request of the Member, who indicated that he wished to have an opportunity to review materials relating to the complaint and the content of some of the exhibits, as he had not had the opportunity to review them. The Member also indicated that he intended to give direct evidence on his own behalf; accordingly, he wanted to have the hearing adjourned for the balance of the day and reconvene the next morning.
228. LSA Counsel indicated that her preference would be to continue but she did not think she was in a position to strenuously object.
229. The Hearing Committee ruled that given there was ample time pre-booked for the hearing, given that the Member was obviously expressing a desire to have more time to prepare and finally, in light of the fact that the Member did not anticipate having to be on the stand so soon, the matter would stand adjourned until the next morning.

### **Mr. Gubbins' Testimony**

230. With respect to M.W.'s stay with the Member, the Member says, beginning at page 150:

A. I received a phone call from M.W. who was in a bit of a panic. She had advised me that the place where she was staying, which was not her boyfriend - - my understanding of who her boyfriend was at the time, her boyfriend's place, but at some other individual's house. That individual I believe had kids and that the - - the mother of the children was not residing at the house, but that when the mother of the children found out that M.W. was residing there or was staying there temporarily, she had advised the male that was there that she was not, that M.W. was not - - no longer welcome.

So M.W. called me and asked what she could do and I said had she talked to her mother. She said her mother did not want her back at her residence. She asked - - I asked her what she was planning on doing. She said she didn't know. She was probably going to have to go to a shelter. I asked if she needed any assistance. She said - - asked if she knew any place I could - - she could stay. I said, well, if you need a place to stay, you can stay at my house for a couple of days until you figure out what your living arrangements are going to be. She indicated that would be great.

She gave me an address. I recollect it was in Millwoods, even though it may have been Sherwood Park. I remember having to take the - - the Anthony Henday to get to the location. When I arrived at the location, it was a condo unit and there was a bunch of garbage bags that were on a - - on the front lawn. M.W. was there. I - - it had been approximately four or five years since I had seen her, and said is this all your stuff? She said, yes. There was no one else in the residence or around the residence, no one else standing there to say good-bye or anything. So I loaded up everything into my vehicle, took her I believe at that point to a Mac's store because she needed cigarettes, went back to - - to my house, had her deposit all of her belongings down in the basement, which was a furnished suite with its own separate bathroom and shower facility. [transcript, page 152, lines 13-16]

I asked her then to contact her Mom just to make sure that she knew where she was, what her Mom's plans were. I spoke to her mother that evening. I indicated that it was fine that - - that M.W. stay there. I had asked if - - what the reason for her not staying - - not being able to stay at the mother's residence and my recollection was that it was because of the mother's, either the new spouse or boyfriend did not want her at the house. We then proceeded to call her brother and her sister, and both brother and

sister said, no, she wasn't welcome to stay there either, so she really had no other place to go. So I said, fine, you can stay there. [transcript, pages 152-153, lines 16-end; lines 1-3]

Then her phone ran out of minutes or wasn't working any more, so I said, look, you can use my phone, call whoever you need to to try and make some arrangements, because I knew I was going back up to Grande Prairie the following Monday to go back out for court. Well, Tuesday, Wednesday and Thursday. She spent the night. I stayed upstairs. That's where my bedroom was with my own shower facilities, etc. My dog stayed with her down on the main floor and I didn't see her again until the morning. [transcript, page 153, lines 3-14]

When I went and saw her in the morning, she was actually texting some people she indicated that may be able to provide her with some accommodation, and I said who were they? They said - - she said one was a guy that she knew who had been working I believe in the oil industry that was moving up from Red Deer and that he was supposedly going to be able to be roommates with her. I said, that's fine. I went and got some groceries; I came back. She was still utilizing the phone and I said, is it - - any success? She said, no, he doesn't want her to be his roommate. I said, okay. [transcript, page 153, lines 24-end]

Later on that day, I had contact with the mother again. I believe it was - - I believe it was that day, yes, it was still - - it was still Saturday, with the mother and she had indicated that there was - - she was trying to arrange for, and now the terminology, I thought it was an assisted living situation where an individual that we've - - I said in my interview it was A. and that name doesn't sound familiar to me now, but to the best of my recollection, some individual who used to house or rent rooms or suites to individuals who had been at Alberta Hospital who needed, I guess, like transitional housing. That's the best way I could put it. I spoke to M.W. about that. M.W. was adamant that she did not want to go back to any place associated with the Alberta Hospital or any kind of mental health situation. I talked about why she wouldn't want to go back and I guess, for whatever reason, she didn't want to deal with her mother arranging for this alternative living situation. So I said, at some point you're going to have to go, because I'm going back up to Grande Prairie. She said she would try and find some - - try and find some rental unit. [transcript, page 154, lines 1-25]

So I said, okay, use my phone, try and get some - - try and get some sort of accommodation. She had arranged, I believe, two or

three viewings of apartments and asked, well, since she needs - - well, this is how she phrased it. She needed a residence in order to qualify for her grant to go back to school. My understanding is that she had to give up her grant for school, because of being evicted from the last residence, and that would be the only way for her to get the grant reinstated, and I believe it was to some cosmetology course or something to that effect. [transcript, page 155, lines 1-10]

She advise - - asked if I would cosign or - - the term cosign. I offered that if it took somebody to go and indemnify her for the security deposit, I would do that if that was the only thing holding her back, because I knew the mother was not in favor of her living on her own, not in favor of her being anywhere where there was no, I guess, support in terms of her mental health issues. So that was - - was that. There - - there was no - - at that point there was no further indication that she was actually going to be able to get accommodation. In terms of my roommate coming back, it wasn't my roommate, but he used the house to effect his visitation and access to his child that he had in Edmonton and he would be arriving, I believe it was going to be Tuesday or Wednesday, to affect a visitation. I - - I can't recall the exact date when he was going to have his child, but I advised that by that time she would have had to - - had to be out, so that to arrange any kind of an accommodation she could. The mother was then contacted, I believe - - well, Easter - - Easter Sunday, I went to visit my mother and my sister, had Easter dinner and came back that evening. I believe M.W. had the phone all day to try and see if she could try and arrange something. I - - I can't recall if I had my phone. [transcript, pages 155-156, lines 11-end; lines 1-13]

THE CHAIR: Sorry, that was Easter Monday?

- A. That would be Easter Sunday.

THE CHAIR: Easter Sunday?

- A. That was actually Easter Sunday. It was Sunday, traditional Sunday Easter dinner. Came back that evening and M.W. had said that she hadn't made any arrangements, so we contacted her mother again and the mother said that she would be able to pick up and take M.W. that Monday, which I believe was Holiday Monday, but I had no court because of those things, so I was able to drive her to wherever we were to meet. M.W. did not - - directions to the house in Terwilligar, I guess, weren't good and so what we did is agreed to meet at Bonnie Doon, [sic] and then I

met M.W.'s mother at Bonnie Doon [sic] and the way her mother testified about being able to park outside the Safeway, is exactly where it was, a place where essentially you could park for, I think, it's grocery pickup, but it was easy then to just go and remove the bags of clothes that M.W. had in her - - in her truck to - - to her Mom's truck. [transcript, pages 150-157, lines 25 to end and 1-10] [Emphasis added]

231. In terms of how long M.W. stayed with the Member, the Member states:

A. In terms of the length of time that M.W. was at my residence, I can only advise that it had to have been the evening of the 10th through to the morning of the 13th. The time that I was there with M.W. would have been from Friday, the 10th, through most of the day Saturday and then evening of the 12th to the morning of the 13th when I then dropped her off at her - - at Bonnie Doon [sic] with her mother. At no time did I make any sexual advances to her. I never looked at her as a girlfriend or a wife or a potential wife or a future baby mother. I never invited her to go and live at the house. I was no longer living there on a full-time basis. I was living in Grande Prairie. In fact, May 1st, the weekend of May 1st is when I took possession of the house up in Grande Prairie and resided there essentially full time. So I don't know where she got that, where she believed that she thought my intentions were. I - - I, to this day, don't know where she got that from. [transcript, pages 160-161, lines 14 to end and lines 1-7] [Emphasis added]

232. With respect to the pornography and drug issues, the Member states:

A. In terms of the pornography, I've never watched pornography in front of her. My computer is upstairs in my room. She was never up in my room. I lived up - - it's like an ensuite that has everything up there. The only time I saw her is when she was down watching television on the couch and that would be the only time I would spend with her. Most of the time, I was not in the residence. She had my phone. She was free to use the phone as much as she wanted. The only time I saw her again was the - - the 11th was the primary, the most that I saw her, which was on Saturday, and that was spent trying to get her new accommodation, including talking to this individual who supposedly was going to assist her at this with what I thought was transitional housing. I never used any narcotics with her, drank alcohol with her. She smoked cigarettes in the house. I smoke cigarettes in the house. I never gave her any money. I never brought drugs to her. I never used drugs with her. I - - to be honest with you, until the

complaint came April 30th, I had no clue I was every going to see M.W. again until the complaint to the Law Society. Subject to that, that's really - - subject to cross-examination and questions of the Panel, that's really all I can say now. [transcript, pages 161-162, lines 8 to end and 1-8] [Emphasis added]

233. Exhibit 8 is the Member's letter to the Law Society of Alberta dated May 14th, 2009, with reference to which the following exchange with LSA Counsel occurred:

Q. Thank you. And you'll agree with me that you've included information in this letter that suggests you knew quite a bit about M.W.'s mental health history and addictions history, correct?

A. I don't know about the addictions history, but I definitely knew about her mental health history.

Q. Okay.

A. Yeah. About those two incidents, yes.

Q. So you knew some information about her that would cause you to believe she was particularly vulnerable?

A. I don't know if she was vulnerable. I know that she had some history of some issues, mental health issues.

Q. Okay.

A. I don't know about vulnerable.

Q. All right. But you'll agree with me that you knew some relatively personal information about her?

A. Correct. [transcript, pages 165-166, lines 23 to end and lines 1-15]

## **J. INTERVIEWS: The Law Society of Alberta's Assistant Reviewer**

### **M.W.'s Interview: August 7, 2009**

234. On August 7, 2009 the Law Society of Alberta interviewed M.W.

235. At the time M.W. was working as a barmaid and a waitress and had taken a leave from school, planning to return on October 5, 2009.

236. Her schooling was a program at Marvel College in esthetics.

237. M.W. said that years ago the Member had represented a friend of hers. When M.W. went to the court date, she talked to the Member and with her friend's grandmother. From then on, M.W. says she got the Member's telephone number and when she needed some advice and some help a little later on down the line she would call the Member.
238. M.W. recalls that when she was about 18 years of age the Member did come to court and M.W. thought that the Member was representing her. The Member stood up for M.W. and talked to the judge for M.W., "So I thought that was representing me".
239. M.W. recalls that this was the assault charge involving her mother.
240. M.W. relates that in March of 2009 she was living with what she described as a "mentally abusive" man. She says she did not have a phone and asked if she could borrow her neighbour's phone. The neighbour apparently got really mad at her, stating that a house phone is only \$35.00 and calling her names. M.W. and the neighbour got into a fight. She then says: "So I was angry, and I went back into my place. And I was, like, you can't treat me like that. And it was really immature, but I threw some eggs at their car".
241. M.W. says the police came, she cooperated, was fingerprinted and received a Promise to Appear.
242. When she got home, M.W. says she called the Member and told him what happened and told him that this neighbour had made her feel really bad. M.W. told the Member that she didn't want to see the neighbour ever again and wondered if there was any way she could just "not appear".
243. M.W. says the Member told her that she didn't have to appear.
244. The Member also told her that he did not want to represent her and that the Member was going to find her a different lawyer.
245. M.W. then says:

And he was just - - it was just a big run-around that he hadn't got ahold of this person; this person hadn't gotten back to him and he was going to try somebody else.

And I never ended up talking to somebody. I said I wanted to get this Akram guy's phone number because I wanted to just have the assurance. Like, I just wanted the confirmation for myself. Like, it was nice hearing it from him, but I just - - I wanted to talk to the guy that was going to deal with it. You know, help me deal with it.

And he told me that I didn't need to talk to anybody; it was all being taken care of. He told me he was going to call the Crown. And he told me all these things, and nothing happened. He didn't do anything. [Exhibit 10, page 5, lines 9-24]

246. M.W. says that the Member gave her the names of lawyers but not the contact information. The Member kept telling her not to worry about it.
247. M.W. thinks her first court date was April 16th and she tells the interviewer that she should have brought with her the Promise to Appear as she still had it at home.
248. In answer to the interviewer's question: "So you presumably just assumed that he would - - like, you relied on him?", M.W. says: "Yeah. I just assumed that I didn't have to appear."
249. M.W. then relates that she got evicted from her apartment on March 20th and her dad came and helped her move all her things out and then she went and stayed with her dad for a few days. After that, she went and stayed with her mom for about eight days, "And then I had nowhere to go".
250. M.W. says she called the Member and told him that she had nowhere to go, and the Member told her that she could stay with him and, she says: "He took me in to his house".
251. M.W. then clarifies that she actually stayed with her dad and then she stayed with her mom and then she stayed with some people in Sherwood Park that she knew, for just a couple of days. "And then I didn't want to stay there anymore either".
252. M.W. says that she had nowhere to go, she was scared and she thought maybe the Member would help her. M.W. thought it would just be for that night until she could find somewhere else to go. When she arrived at the Member's home, he gave her his cellphone. This was after she started to cry and say that she had nothing and asked if she could please have the Member's cellphone to hold onto for security. She told the Member that having his cellphone made her feel safe. The Member gave her his cellphone and let her keep it for the entire time that she was there.
253. M.W. says: "And I texted for the whole time that I was there trying to find somewhere else to go, and it took me five days to do that". [Exhibit 10, page 10, lines 12-16]
254. M.W. says that she understood from the Member's comments that the mischief charge involving her neighbour would be resolved by the Member. M.W. says she didn't want to pester the Member or bug him too much so she didn't ask him too much. M.W. does say that she made sure that the Member knew that she was still concerned about it and wanted some confirmation, to which the Member is said to have told her not to worry about it, its taken care of, don't worry about it, just relax.

255. M.W. says that she was not certain that the Member had in fact taken care of the problem and: “You know, like, the gut feeling that he wasn’t - - that he was just screwing me around”. [Exhibit 10, page 12, lines 20-21]

256. The interviewer asked M.W. that, considering she had the impression that the Member was just screwing her around, what made her decide not to go to her first court appearance?

257. M.W. said that she was in Terwillegar neighborhood, she didn’t drive and the Member told her she didn’t have to. So she trusted him. Then M.W. says:

Like, I still had the gut feeling and I was, like, hey, the Court date passed - - I think it was honestly the third day that I was there - - and I said to him, like, are you sure that I don’t have to go? Like, I’ll bus it. And he said no. So I didn’t. You know, like, it’s a stupid little charge that why have all this trouble for. Like, I had no problem going. You know, like, I would have wrote a letter of apology. I told him I apologized. But he told me that it was dropped, so - - [Exhibit 10, page 13, lines 2-13]

258. The following exchange then occurs between the interviewer and M.W.:

MS. JENKYNS: Okay. So the first court appearance date passes, and what does he tell you has happened? Do you ask him what happened on that date; how it was resolved?

M.W. Well, he started getting fed up with me because he wanted to sleep with me, you know, and I - - that wasn’t happening. It clearly wasn’t happening. I was very honest with him that I wasn’t going to be physically involved with him.

And after the fifth day, he just - - I think he knew that it for sure wasn’t going to happen and he was just, like, okay. Well, you have to go; my roommate doesn’t want you here any more and you have to go.

So I was, like, fine. That’s fine. I was - - like, I just want to get out of here anyway. It wasn’t a happy place to be. There wasn’t very good times there. So - - like, we did - - we did get along, you know, like, but he just had some habits that made me uncomfortable. And plus the drugs that we did. We did do a lot of drugs and - - [Exhibit 10, page 13, lines 14-end and page 14, lines 1-9]

259. After this, M.W. says that the Member bought her cigarettes for the five days that she was there. The Member also asked if she wanted anything else and asked M.W. if she needed anything such as toiletries.

260. M.W. says she didn't let the Member buy her anything except for cigarettes and food but she didn't really eat because she was snorting a whole bunch of cocaine.
261. M.W. says that after the bag of meth was gone, the Member got more coke.
262. After the Member dropped her with mom, M.W. went looking for an apartment and says that the landlady wanted a criminal record check.
263. M.W. relates that as she was passing a police station, she had a "gut feeling that Kevin had lied to me" and said that she decided to call the Member and find out if there could be a warrant issued for her.
264. M.W.'s evidence then turns to the Member indicating that M.W. would have to do Alternative Measures. At page 18 of Exhibit 10, lines 14-22:

And he said you have to do Alternate Measure; and I was, like, why? Like, isn't that a program that you have to agree to do or something? And then I was, like, I don't want to do that, you know. Like, I was, like, why can't I just write out an apology letter? It's, like, a petty little crime. It's nothing. I don't understand why I'd have to do community service, you know. Like - -

265. M.W. then relates that she had a discussion with the Member and he told her that he would bring the criminal record check to her and told her to phone him on Wednesday at noon.
266. M.W. says she called the Member three times in an hour and he ignored her phone calls.
267. M.W. then says:

So then I was really upset because I was - - like, I really wanted this place and I told her I was going to have this today. And so that's when I wrote my letter up because I was just, like, this guy's just lying to me. So that's when I wrote my complaint letter. [Exhibit 10, page 20, lines 7-12]

268. M.W. then relates that she went to the police station herself and got a criminal record check which did not include any warrants for her arrest. M.W. says that the police officer who gave her the criminal record check said that it takes about two weeks for a warrant to appear on a criminal record check and that it had not been issued or had not shown up on the criminal record check yet.
269. As of August 7, 2009 M.W. had not made any further inquiries about where her court situation stood and the interviewer suggested that M.W. call the courthouse to figure out what is going on because if M.W. was eligible for Alternative Measures, those community services would have to be completed within a certain amount of time.

270. The last conversation M.W. had with the Member was having to do with him bringing a criminal record check. After that, M.W. says:

Yeah. I was, like, I'm done. After that I wrote my letter, and I haven't talked to him since then. [Exhibit 10, page 25, lines 12-14]

271. M.W. says that the Member never forced himself on her at all, he never got aggressive with her or anything like that. M.W. says, at page 27, of the interview transcript:

MS. JENKYNS: So prior to you staying at his house, had he made any kind of sexual advances towards you before you stayed at his house?

[M.W.]: No. There were some text messages but, like, I was just, like, thinking they were mostly jokes and - - I don't know. And then he was, like, send me a picture and stuff and you know that - - like, I sent him a picture of my face, but that's not what he wanted, right? And so he said something along those lines - - oh, I wanted something a little more you know [after which M.W. agrees that the word she was looking for was "provocative"].

272. M.W. said that the Member also watched a lot of pornography.

273. M.W. said that she and the Member would have heart-to-heart talks although she can't remember a lot of the conversations but the Member did say he was happy he could help M.W. out and he enjoyed M.W.'s company.

274. M.W. said she did her best to try to be a good guest at his house by cleaning up, doing the dishes and cleaning up his dog mess.

275. At pages 27 and 28 of the interview transcript, M.W. relates her feelings about the Member, as follows:

And I'm, like, oh, no. Sorry. Like, here's a nice big smile for you though. Like, hi. I don't know? We had text messages.

And then - - but, like, I did, you know, like him to a degree as a friend, you know, like, because he was helping me out so much. You know, like, he took me into his house and he didn't have to do that. I understand that that could get him in a lot of trouble because he was my lawyer, right? So I do feel bad about that.

But it's just - - he's just - - the way - - he didn't have to make my life so complicated, you know. Like, I feel like if he just would have been, like, M.W., yeah, okay. Go to your Court date. I'm not going to - - I'm not even going to help you, you know. Like, I'm an expensive lawyer now and you do whatever you got to do on your own. Like, just go in there and

tell them your story. Just stand there, right? I don't know. It just - - it felt like he could have - - this is all just a bunch of stress that I didn't need in my life but he's just laughing about, you know. Like, ha, ha; your life's hell and now it's a million times worse. [Exhibit 10, page 27, lines 13 to end and page 28, lines 1-9] [Emphasis added]

276. M.W. then says that she was under the impression that the Member was representing her and clarifies her thinking by saying, at page 29, lines 4-7:

I was under the impression that he was helping me out and he was my lawyer until he said I'll get you somebody else. And he never got me anybody else.

277. Finally, when asked whether M.W. was under the impression that Mr. Akram had appeared for her at the first appearance, the following exchange occurs:

MS. JENKYNS: So when your first appearance came and went, were you sort of under the impression that Mr. Akram had appeared for you?

M.W. I wasn't - - I was really - - I was really confused because I thought Kevin was mad at me because he wasn't getting what he wanted from me.

MS. JENKYNS: You mean sexually - -

M.W. Yes.

MS. JENKYNS: - - he wasn't getting what he wanted? Okay.

M.W. So I thought that he - - you know, because he wasn't getting what he wanted, then he was not going to give me what I wanted. You know, I wanted help; he wanted sex. And he wasn't getting it, and so I wasn't getting it. And - - I don't know.

MS. JENKYNS: So can I just ask? You had Mr. Akram's name. Is there a reason why you just didn't like, look him up in the phone book and give him a phone call?

M.W. I think it was just I was so stressed at that time. I had nothing. I was just so stressed that I just - - I was just hoping. You know, like, I was, like, okay. This is all just - - it's all up in the air right now, but it's all going to clear, you know. And I was confused. I didn't know. I didn't - - I don't know how to go about it. Like, how do you find a certain lawyer, especially one that's not a Legal Aid one? You know, like, sure I can find the Legal Aid number and call it, but I just didn't know how to go about it. [Exhibit 10, page 29, lines 20-end and page 30, lines 1-25]

278. When asked to comment on the Member's response letter [Exhibit 8 dated May 14, 2009], M.W. says this:

You see, this man is very - - he's so smart that I think he just has, you know, too - - he has too much time on his hands and he's too smart or - - he's just too smart and he wants to - - he's - - like, this is lies. He's flat out lying and - - he's lying. Like, saying that we're not - - that we didn't do drugs is - - I can't even believe that. Like, I was thinking - - I don't know why, but I was thinking that he was going to be, like, yeah, I have a drug problem, you know, and I was hoping that maybe he had gotten help. But no. He's lying about the drugs; he's lying saying that - - [Exhibit 10, page 33, lines 9-21]

**The Member's Interview: October 16, 2009**

279. On October 16, 2009, the Law Society Assistant Reviewer conducted an interview with the Member.
280. The Member recalls meeting M.W. in a situation where he was dealing with a client issue at the courthouse. His client and M.W. were friends. There was a concern about a housing situation and the Member recalls discussing with his client's grandmother and M.W.'s mother whether it was a good idea that the two young women live together, considering their outstanding legal issues.
281. The Member describes M.W. as an acquaintance and recalls only speaking up on behalf of M.W.'s mother at the courthouse in Sherwood Park. If anything, he would have had involvement with M.W. by responding to a request from the court or a judge to provide information or assistance when the court asks, or duty counsel asks, or the Crown asks, or the sheriffs ask for some help. Other than that, the Member does not think he ever was appointed, retained, represented or read disclosure or anything else with respect to M.W.. The Member is certain he has never appeared on the record for M.W..
282. The Member agrees that he could have spoken to the court on behalf of M.W., in the informal manner that he relates.
283. The Member agrees that M.W. had contacted him about a situation that had occurred in Hinton or Edson and the Member also thinks she called him about suing doctors for medical malpractice.
284. The Member then recalls getting a call from M.W. saying that she was no longer welcome at her mother's place, no longer welcome at her sister's place and had taken a leave of absence from work because she wanted to go back to school.
285. After that, the Member does recall that M.W. was charged with egging a neighbour's car and that this was around Easter time that M.W. contacted the Member.

286. The Member knew that M.W. had been charged with throwing an egg on a neighbour's car but he doesn't know if that would have coincided with the time period where M.W. was no longer welcome at her sister's place.
287. The Member understood that she was residing with someone in Edmonton and not at her family home.
288. The Member recalls that M.W. asked what would happen and the Member said that M.W. would need to find out whether or not she had a criminal record to find out whether or not she would be approved for what they call Alternative Measures.
289. The Member could glean from what M.W. was telling him that this was the information she would need.
290. The Member says that M.W. was worried about whether she should just go and apologize. The Member told her not to talk to the person as this could just get her into more trouble.
291. M.W. then asked the Member why he couldn't just "throw it out?"
292. The Member said that that's something that's got to be done in court, charges are laid, that M.W. would have to go to court and that M.W. would have to go to fingerprinting. The Member also said that he told M.W. to see if she could get approved for Alternative Measures and explained to her what Alternative Measures was.
293. The Member confirmed that it was in the first conversation he had with M.W. that he explained to her what Alternative Measures were.
294. The Member talked to M.W. about whether damage was done to the car and suggested that she wait to see what was there in terms of damage and to find out whether or not the Alternative Measures Program was available. The Member also says he told M.W. that if she accepted Alternative Measures, then at the end M.W.'s charge would be withdrawn if M.W. completed all the probation.
295. The Member says that M.W. asked whether it couldn't just "go away?" The Member says M.W. told him that: "It's stupid; can't it just go away; you know, neighbours fight."
296. To that, the Member says he told M.W.:

Can't it just - - can't it just go away? Something like that, you know. It's stupid; can't it just go away; you know, neighbours fight. I said you know what? That's fine. But now it's no longer neighbours fighting; it's in Court. So I... [transcript, page 15, lines 12-17]

297. The Member says that he told M.W. that he could not represent her because he didn't practice in Edmonton anymore, he practised up in Grande Prairie and so he wouldn't be able to do this.
298. The Member recalls that he told M.W. that his firm could probably do it if she needed help and says that he knew she was not going to qualify for Legal Aid because it was a minor charge.
299. The Member says he told M.W. to get her own lawyer.
300. The Member says he thinks he might have suggested Student Legal Services also, but told M.W. that that service might only start in the summer.
301. The Member says that he can't really say exactly what he told her but he did tell her that the Member could not act on her behalf.
302. The Member says that he provided M.W. with the names of two lawyers, including Kevin Lieslar from his office, and that Kevin Lieslar was at the same number at this office, and "Attia".
303. The Member says that M.W. wanted Akram's cell number and the Member told M.W. that he was not going to give anybody Akram's cell number.
304. The Member can't recall whether he gave her Akram's office number.
305. The Member recalls for certain that the only number he does know that was not provided to M.W. was Akram's cell phone number and other than that, the Member could not prove or tell the interviewer anything else.
306. The Member does not know if M.W. contacted these lawyers.
307. The Member says he did not tell M.W. that he would take care of the matter for her; rather, the Member told her he could not represent her at all; could not take care of it. The Member told M.W. he could not personally take care of anything to do with it and that the other lawyers would have to deal with it, not him and that he would not deal with it. [Exhibit 12, pages 17-18]
308. In answer to the question whether the Member ever told M.W. that he would contact the Crown and make a phone call and sort the matter out, the Member says this:

MR. GUBBINS I think she wanted to know whether or not she had been approved for Alternative Measures. I said I don't know; I could try and check. But I don't know if that was just a flip saying let me see if I can call the Crown's office; find out when the next appearance is.

MS. JENKYNS: So you could have possibly told her you'll phone the Crown and see - -

MR. GUBBINS Yeah, yeah. I mean, you know what? I can't - - I can't say that I would never categorically say oh, yeah.

I said - - I think I said - - I might even have given her Jackie Fairweather because Jackie Fairweather is the Adult AMP - - Alternative Measures lady. Like, she's the one who - - she does the approval or disapproval. So if you have a problem with - - let's say the guy says I may have dented a little tiny portion of the door and the guy's claiming a whole side panel of damage, so, you know, maybe you say okay, look. Maybe there's a compromise position.

So yeah. It would have been Jackie - - yeah, but I don't know. Yeah. I couldn't tell you. I couldn't tell you whether or not I said let me make a call or, you know, you call or - - [Exhibit 12, page 18, lines 8-end and page 19, lines 1-6]

309. The Member recalls that M.W. had missed her fingerprinting because the Member told M.W. to turn herself in and do her fingerprinting.
310. The Member has no exact recall of the dates but it would have had to have been around the same time as her first appearance because "you have one week".
311. The following exchange occurs on page 21:

MS. JENKYNS: Did you at any time tell M.W. she did not need to appear for Court; that you would deal with the matter?

MR. GUBBINS: No. She had to - - I told her she had to go and make sure that, one, the Crown proceeded summarily; two, that she had contacted a lawyer; three, that no matter what she does - - even if she doesn't have to show up for the last appearance, she has to make sure that she does the work for Alternative Measures.

That's the whole thing about can't it just go away. You know, it was stupid; it was just an egg. I said well, that's - - I'm not telling you. I'm just telling you that you'd have to do all the work that they suggested that you do so you satisfy the terms of your probation. [Exhibit 12, page 21, lines 15-end and page 22, lines 1-3]

312. The Member says that he did not follow up with M.W. as to whether she attended her first court appearance because he believes he was working in Grande Prairie.

313. The Member says that Betty, one of the court clerks, told the Member that someone had been talking about him and Betty told him who it was, at which time the Member found out about M.W. having a warrant for a mischief charge.
314. The Member recalls trying to call M.W. at the place M.W. was staying and received no response.
315. After that, the Member got a letter from the Law Society of Alberta concerning this complaint.
316. The Member says that he had no idea whether or not M.W. was represented.
317. In terms of M.W. staying at the Member's home, M.W. phoned to say that she can't stay at her mother's place, she can't remain living where she is because the mother of young children would not allow the children to be there if M.W. was at the property.
318. The Member said M.W. asked if she could throw her stuff at his place so that she could use his phone so she could find a place to live.
319. The Member says that he loaded up M.W.'s stuff, dropped her off and M.W. said that she couldn't use her phone so the Member told M.W. that she could use his phone. The Member recalls that M.W. called her sister.
320. The Member said that M.W. could stay for a couple of days but that he had Easter coming up and then he had to go back to Grande Prairie which was where he lived. The Member says he also has a house in Grande Prairie so he had two residences – one in Edmonton and one in Grande Prairie.
321. At page 30 of the interview, is the following exchange:
- MS. JENKYNS: Okay. When you made her the offer for her to stay at your house, did you believe that she understood that you were not representing her on the mischief charge:
- MR. GUBBINS: Yes. That was purely just - - this was somebody who was - - like, and I thought she was still hitting rock bottom because I thought the mother - - the sister, actually, would be the one to say okay, come stay with me because she was taking care - - it was like a stay-at-home nanny for her niece until whatever happened. So yeah. I figured, you know, total just emergency helping the family out. That's it. Nothing more. [Exhibit 12, page 30, lines 4-17]
322. The Member recalls having Easter Sunday dinner with his own mother and sister and then on another day where M.W. was staying at his Edmonton home, he was up in Grande Prairie.

323. The Member says that he might have talked to M.W. about the Alternative Measures Program while she was staying at his house but at no time did the Member tell M.W. that she didn't need to appear for court. The Member told M.W. that he could not be her lawyer, and that she knew.
324. The Member does recall speaking to J.P., and remembers that he ended up with a little bit more of an understanding as to why J.P. was making sure that M.W. was going into a more structured living arrangement which, the Member thought, was "smart".
325. The Member says that's how it ended up that he brought all M.W.'s stuff to her mother and also thinks there may have been discussions about M.W.'s boyfriend. The Member says that he just doesn't know.
326. The Member does recall talking to J.P. about the Alternative Measures Program and telling J.P. that first they had to find out whether or not M.W. had a criminal history because if M.W. had, "they won't give her AMP".
327. The Member also says that he told J.P.: "But if they give her AMP, then all she has to do is complete the work. Then she never has to show up again. Once it's completed, the charge will be withdrawn".
328. Following this, at page 34 the following is said:
- MS. JENKYNS: This is what you told J.P.?
- MR. GUBBINS: Probably word for word. Pretty much the standard spiel for the - - I always call it it's the guarantee. It's the one guarantee you'll always have. It's a get out of jail free. If you satisfy the terms of the probation, the probation will send a letter to the Crown. The Crown will bring the matter forward and withdraw the charge. Done. Simple as that. [Exhibit 12, page 34, lines 13-22]
329. The Member goes on to say that he remembers describing the program saying that M.W. has got to be approved for the program and that M.W. kept talking about these things "That just disappeared. These charges. I said I don't know what you're talking about. Charges just don't disappear". [Emphasis added]
330. The Member says again that he never told either M.W. or her mother that M.W. didn't need to appear for court.
331. The Member also says M.W. would have to always appear for at least - - minimally if she got approved for Alternative Measures to go into - - to sign into the program.

332. The Member admits sending text messages to M.W. including jokes, questions and personal stuff.
333. The Member says he did not send pictures to M.W. but M.W. sent him a picture of an owl.
334. The Member concedes that he may have used swear words in his text messaging with M.W.
335. The Member denies that he made any sexual advances to M.W.
336. The Member denies that while M.W. was staying at his house both she and he used cocaine and possibly crystal meth: “No. Never.” [Exhibit 12, page 37, line 13]
337. The Member says that he understands the allegations being made by M.W.:
- And, again, I - - those aspects I’ve categorically denied them. Again, that’s - - and I will, again, categorically deny them. [Exhibit 12, page 37, lines 15-18]
338. Thereafter, the Member once again says he did not use any drugs of any kind while M.W. was in his house and whether M.W. was present in the room or not.
339. In terms of offering to co-sign so that M.W. could obtain an apartment, the Member says that he told M.W. he would do that if necessary, if her mother wouldn’t do it then he would guarantee the security deposit. The Member said he told M.W. that he would not post the security deposit but he would guarantee it. The Member said he did not know whether a landlord would find that acceptable but he did tell M.W. that he would be willing to do that.
340. In answer to why the Member would be willing to help M.W. in this way, the Member basically indicated that M.W. had gone from being a troubled kid to a smart kid who had finished beauty school, had gotten a stable job, found herself with a good guy who had just started out in the oilfield. But, the two were having problems “getting good rent”. [Exhibit 12, page 40, lines 7-16]
341. The Member then says, at page 40:
- And I’m thinking okay. That’s great saying - - you know, kind of bypassing all the stuff about what happened with the family. Then kind of realized that it was probably just a little bit more of the old issues that she had before regarding the family that were probably popping back up again.

And I said well, look. You know, if you can't get them to go and sign for you, I will sign but, you know, go back to school. Part of it was they had to make sure that she had someplace stable to go so she could say I've got a residence to get her school funding; blah, blah, blah, blah, blah.

So I said it's a Catch-22 position. I know I'm not going to get a - - like, I'm not going to be out any money, so I told her I'd do it. Yeah.  
[Exhibit 12, page 40, lines 17-end and page 41, lines 1-6]

342. The Member says he did not make this offer to M.W. while she was staying with him.
343. The Member then relates that the reason M.W. left his home is because he thought her mother J.P. had figured out alternate accommodations and although the Member does not specifically recall, he believes that J.P. was speaking to a man named "A." who places individuals who had previously been patients at Alberta Hospital.
344. In terms of the criminal record check, the Member says he told M.W. that the criminal record would be in her disclosure.
345. The Member recalls that M.W. needed to get a criminal records check for an apartment, to which the Member said that as she would have to pay for that criminal record check herself, he suggested that she just wait for it from the disclosure and look in there because it would have a printout of the criminal record.
346. The Member recalls that this conversation occurred after M.W. had left his home.
347. The Member doesn't precisely remember if this was the same conversation or a different conversation around the same time where she was talking about viewing apartments.
348. The Member also recalls that M.W. was with her mother at this time.
349. The Member denies that he told M.W. not to go to the police station.
350. The Member says that once he was aware that a warrant had issued, he left two messages for M.W. that afternoon. A message was taken but M.W. never called him back.
351. After leaving those messages, the Member never spoke to M.W. again.

## **K. STATEMENT OF M.W. DATED APRIL 30, 2009 / ORAL EVIDENCE**

### **Citation 2**

352. The Hearing Committee will discuss, more particularly, the allegation contained in Citation 2, first, and then will consider the allegation contained in Citation 1.

353. There are significant discrepancies between the statement in writing given by M.W. dated April 30, 2009 and her testimony under oath in June of 2011.
354. The Hearing Committee finds that these discrepancies are neither innocuous nor insubstantial; rather, on important factual issues concerning the allegations made against the Member – in particular the personal misconduct allegations – there are significant problems that seriously undermine the credibility of the Complainant.
355. It must be said that while the credibility of the Complainant in respect of her recollection or recall is seriously undermined, that is not to say that she did not have an honest but mistaken belief in what she was telling the Hearing Committee. Unfortunately, factors that more probably than not came into play during the material times adversely and significantly affected her ability to accurately recall events.
356. For example, in her written statement M.W. says that the day before her court date she asked the Member if she should go to court. The Member said “no, not on this one”. She says: “He told me I had to do Alternative Measures. I asked why. I said I was sorry, it was stupid and I will pay for a car wash – there was no damage!”
357. This is distinctly different than her testimony under oath where M.W. says she was very careful how she brought up the court date because she didn’t want to irk the Member or make him mad. M.W. testified that she knew the Member had the ability to get rid of this mischief charge for her. This is not correct because not only did M.W. argue with the Member the day before the court date about having to go to Alternative Measures, the Member told M.W. that he could not get rid of the mischief charge or have it dropped because the charge was in the court system.
358. In M.W.’s written statement she says: “I had nowhere else to go and at this point was so fed up and frustrated! I didn’t study law but I know I shouldn’t have another court date for such a small offence.” “The whole month that he had to call the Crown for me, or simply tell me to go to my court date. He lied to me.”
359. The Member did not lie to M.W.; in fact, the Member told M.W. (and she acknowledges this in her April 30<sup>th</sup> complaint to the Law Society of Alberta) that M.W. would have to sign on if approved for Alternative Measures, and would certainly have to go to court. M.W. clearly understood but was certainly very angry about the fact that the mischief charge was now in the court system so would not be dropped, and also knew that the Member could not simply make it “disappear”, if she said she was sorry and apologized.
360. M.W. complains that the Member lied to her because she knew that she should not have another court date for such a small offence. M.W. complains that the Member had a full month to call the Crown to arrange for the charges to be dropped, or to tell her that she needed to go to court. In fact, the Member did tell M.W. there would have to be a court date “for such a small offence” but, depending on her past record, perhaps it could be dealt with through the Alternative Measures Program. That was not a lie.

361. In her written statement, M.W. states that the Member was trying to manipulate her and she knew that if she did not give him what he wanted (here, the Hearing Committee infers M.W. meant sexual favours), the Member would “screw me over”.
362. Other than some rather vague and oblique references to verbal comments that were “vulgar”, M.W. relates no instances of touching, threats, bargaining, pleading, or any other communications whether verbal or bodily by the Member that could reasonably or possibly lead her to believe that the Member was trying to “manipulate” her or required that she provide sexual favours in exchange for anything the Member had to offer.
363. The Member had numerous opportunities to engage in inappropriate sexual and other unwanted conduct but never did so.
364. The Member had an acquaintanceship with the Complainant M.W. for a period of approximately five years, from the time she was approximately 18 years of age to age 23. Throughout this time period, there were infrequent contacts by M.W.. Other than listening to M.W.’s troubles, the Member made no attempt whatsoever to meet with M.W. or to otherwise personally engage her. Thus, the Member’s statement - under oath - that he had no interest in having any sexual or intimate relationship with M.W., is entirely believable.
365. During M.W.’s brief stay at his Edmonton house, the Member went out for groceries, went to Easter Sunday dinner with his mother and sister and went to work.
366. The Member says that he saw M.W. downstairs where she was watching television; his living quarters were upstairs. M.W. does not deny this sleeping arrangement. M.W. says that she noticed what she says was pornography, when she walked by and viewed the Member’s personal laptop computer screen. This is not a situation where pornographic materials were being viewed on the television where M.W. was staying. If M.W.’s recollection is accurate, the images were transitory and were being privately viewed. Because there is scant detail as to the content of the images M.W. testified to seeing, it is difficult to decide whether, in fact, the Member was viewing pornography. The available evidence is very unclear, inconsistent in terms of the frequency of the Member’s viewings and, consequently, quite unreliable.
367. According to M.W., she was essentially marooned in the Member’s Edmonton house, being without a vehicle, unable to drive, without money and otherwise incapable of leaving. M.W. describes being a “prisoner”.
368. Yet, the actual evidence is that M.W. was speaking to family and friends throughout the period of time that she was staying at the Member’s property. M.W. says that she was texting people throughout the entire time that she stayed at the Member’s home. If M.W. felt herself to be a prisoner, surely someone could have come to rescue her during the Member’s lengthy absences from the property.

369. This Hearing Committee notes that neither M.W.'s mother nor any other person has testified that M.W. reported while M.W. was in the Member's house any concerns about being kept there against her will, or being unable to escape or being fearful of the Member. Nor did anyone testify about being told by M.W. about concerns about actual touching or unwanted physical contact or offensive propositions by the Member, or drug use, or pornography use – while M.W. was in the Member's house. These reports occurred after M.W. left the Member's home, and was delivered back into the care of her mother, while either under the influence of illicit drugs or coming off of a drug high.
370. This Hearing Committee is extremely disturbed by the commentary of M.W. during the Law Society of Alberta interview in which M.W. states that she understood that because the Member allowed her to stay at his house, she understood that this could get the Member into a lot of trouble because "he was my lawyer, right?" M.W. says that while she does feel bad about that problem for the Member, she also says that the Member made her life "so complicated, you know." M.W. blames the Member for causing a "bunch of stress" that she didn't need in her life. Then, most disturbingly, M.W. says about the Member: "... but he's just laughing about you know. Like, ha, ha; your life's hell and now it's a million times worse." [see page 60 of this Report]
371. There is absolutely nothing in the testimony of J.P., or the Member, or in any of the evidence proffered by the Law Society of Alberta to suggest that there is any truth to this statement. Quite to the contrary, the Member gave this young woman shelter and food and cigarettes when no one else would help her, when she had nowhere else to go and would have been on the street. The Member told M.W., and she acknowledges understanding that, while he could not act as her lawyer, he did give her names of other lawyers that could. The Member tried to help.
372. Later in her statement, M.W. says that: "My court date passed and he assured me I didn't need to appear. As I was staying with him and do not drive, I was worried but trusted his word." Worried, perhaps, but also in possession of the names of other lawyers whom she did not call. Worried, perhaps, but having admitted in her statement that the day before court, she and the Member had talked about the need to sign on for the Alternative Measures Program.
373. M.W. writes that she left the Member's home on April 16th and the Member drove her "downtown" where her mother picked her up. This is obviously inaccurate as her mother and the Member both testified that they arranged for an April 13th transfer (Easter Monday) - to transfer M.W. and her belongings at the Bonnie Doon shopping centre near the Safeway store, not at a location downtown. By as early as April 30th, 2009, M.W. had significant impaired and incorrect recall of significant facts – possibly due to her drug use during this period of time or her anxiety, or both.
374. In her written statement of April 30, 2009, M.W. said she started to feel more and more uncomfortable at the Member's home as the Member began to be more comfortable around her, the Member watched porn "all day and we snorted I'm sure close to \$1,000.00 of cocaine in the five days I was at his house". Again, and as previously

discussed, this testimony goes to the basic issue of M.W.'s credibility and goes to the reliability of M.W.'s testimony of actual events at the Member's home. Serious concerns are raised about whether M.W. is re-constructing or embellishing scenarios or if, given her substantial anger at the Member, M.W. is outright lying, knowing that the allegations charged against the Member are most serious and, if found, could have devastating repercussions for the Member's professional future.

375. Here is what the Member says, for example, about Easter Sunday (which was in his recollection on April 12, 2009 – the correct date): the Member spent a large part of the day with his mother and his sister. There is no reason to dispute or disbelieve the Member's testimony on this point. And, there is no evidence to contradict the truth of what the Member is saying about how he spent the day. Of reuniting M.W. with her mother J.P., the Member says that it was on Easter Monday, i.e. April 13, 2009, that he arranged with M.W.'s mother to meet at Bonnie Doon mall because he was not working that day. The Member also says that the only significant time he spent with M.W. at his house was on the main floor, where M.W. was staying on the couch and watching television. Both the Member and M.W. say that a large part of her time was taken with M.W. calling or texting various people to try to secure a place to stay. The Member throughout encouraged M.W. to find alternate arrangements quickly because he was chiefly practising out of Grande Prairie, which M.W. does not deny having been told.

376. It must be said, again, that this Hearing Committee is very concerned that a possible improper motive for M.W. constructing tales about the Member's alleged misconduct, comes out in M.W.'s interview with the Law Society of Alberta's Reviewer – at page 27:

You know, like, he took me into his house and he didn't have to. I understand that that could get him a lot of trouble because he is my lawyer, right? So I do feel bad about that.

377. M.W. was clearly very angry that the Member just couldn't get the mischief charge dropped and was angry that he was not performing to expectations in failing to dispatch her legal problem. M.W. expressed the viewpoint that she thought she could get the Member into a lot of trouble by telling the Law Society of Alberta that the Member had taken her into his home.

378. The Member denies sharing pornography with M.W. The Member also denies watching pornography at any time while M.W. was on his property. Further, he says that his own living quarters were separate and apart and that his computer was located in his own living quarters.

379. M.W. does not say that the Member forced her to watch pornography with him and nor does M.W. indicate that she was trapped in the same quarters as the Member and was, for that reason, incapable of leaving the alleged pornography viewing area. M.W. says she saw pornography on the Member's computer screen as she walked by and upon observing these images made her opinions about pornography well known to the Member.

380. Similarly, M.W. does not state that the Member forced her to remain at his home or restrained her from leaving or in any other fashion prevented her from doing as she wished, either by staying or by leaving. Both the Member and M.W. say that for the majority of her stay at his home, she had full and unfettered access to his telephone and that she had been speaking to her mother and other acquaintances and friends on a frequent and unrestricted basis.
381. Similarly, while the Member does admit to using cocaine at some point in his life prior to his legal career – which may speak to the Member’s truthfulness and candor even in circumstances where it would be much easier for him to lie, the Member categorically denies using cocaine or any drugs or alcohol in the presence of M.W. in his home. The Member says that both he and M.W. smoked cigarettes.
382. M.W.’s testimony about being free of drugs in the days preceding her stay at the Member’s home is completely at odds with and contradicts entirely her mother J.P.’s testimony. To the contrary, it seems clear from the testimony that it was due to the behaviour and drug use of M.W., that neither M.W.’s mother, or brother, or sister, or mom’s friend S. (who lived in Sherwood Park) wanted anything to do with M.W., much less take her into their own homes.
383. Similarly, although M.W. says that she “cut herself off” cocaine on day three of her five day stay at the Member’s home, J.P.’s testimony is that when M.W. got into J.P.’s car at Bonnie Doon mall, J.P. knew at the time that her daughter was definitely high because of the way her daughter was acting. J.P. further said that nothing was said to M.W. about this because that would have started an argument. Obviously, Mom was still wary of M.W. and concerned about outbursts and misbehavior.
384. M.W. related to this Hearing Committee that in previous incidents that caused her problems, she had used the drug Salvia. M.W. also said that she had been texting and phoning constantly while she was at the Member’s home. It is possible that M.W. had her own source of psychoactive drugs which could have induced either the dissociative or paranoid effects that may have skewed M.W.’s perception of reality. No one knows.
385. It seems entirely implausible, however, that if it all of this was happening, as M.W. has testified, that M.W. would not have told her mother (who was said to be very close to her), or her siblings or any of her friends or acquaintances with whom she was in communication about at least some of what was going on: that she was snorting cocaine “by the bagful”, that the Member was a “creep” (as she later described him) or that during her entire stay there she felt “uncomfortable”, a “prisoner”, and that the Member was making constant and unwanted verbal comments about his wish to engage M.W. sexually, not to mention the pornography, and the drug dealers visiting. And if, in fact, M.W. did relate any such things to third parties while she stayed at the Member’s home, the Law Society of Alberta has led no evidence to that effect and there is simply no corroboration of any of these allegations.

386. It seems equally incredible that the Member, a lawyer of 10 years' experience - much of it in youth court and criminal court - would have done and said the things M.W. claimed that he did, in a circumstance where he had told M.W. that her stay was a very temporary arrangement, was actively encouraging her to find someplace else to stay and took her in, instead of leaving her to fend for herself on the streets. This Hearing Committee cannot accept, on the evidence given, that this reasonable, rational and experienced lawyer would risk his entire professional life and livelihood to engage in such questionable, cringe-worthy and supremely unprofessional behavior. When there was clearly so little to gain and so much to lose, such a conclusion would defy belief. The Member testified that he knew M.W. had no one else to turn to, and nowhere else to go. The Member's motive was altruistic, not predatory.
387. At the end of the day, the totality of the evidence proffered by the Law Society of Alberta in support of the most egregious allegations of misconduct against the Member does not satisfy on the requisite burden, or at all, this Hearing Committee's collective pool of commonsense and life experience. Having regard to the evidence and testimony, taken as a whole, this Hearing Committee simply is not satisfied that this Member engaged in any of the inappropriate and truly bizarre behavior alleged.
388. In considering the evidence about the warrant for M.W.'s arrest, while this Hearing Committee accepts that M.W. may have called the Member to request his assistance in obtaining a criminal record check, there was significant confusion on M.W.'s part about the content of or the reason for the warrant being issued. When a Hearing Committee member specifically asked for clarification about a warrant possibly arising from a failure to appear on the mischief charge, M.W.'s answers were unclear and confused.
389. There is no actual evidence to assist the Hearing Committee in determining what the warrant was for, when it was issued and whether the Member was implicated in that warrant having been issued. Therefore, the evidence available is not sufficient to make a finding of fact, one way or the other.
390. In cross-examination, M.W. admitted that the Member told her the names of two other lawyers, one of whose names she could only partly remember, but who were Edmonton lawyers Akram Attia and Kevin Lieslar. While the Member says that he did give M.W. the office telephone numbers for these lawyers, Mr. Lieslar being at the same office telephone number in Edmonton as the Member used to be, M.W. denies having been given any telephone numbers. M.W. does not deny that the Member told her that he could not act as her lawyer.
391. When M.W. was specifically asked why she did not personally and directly contact these other lawyers, she says that it was because she was "stressed out". But, in other testimony, M.W. says that she was terribly worried that the Member wasn't doing what he said ("taking care of it") and that she was highly suspicious that the Member was trying to "screw her over". Considering the latter stated concerns, the given reason as to why M.W. did not contact the other lawyers does not have a strong air of reality.

392. M.W. also conceded that the Member told her that he was practising mostly out of Grande Prairie and, also, that the Member told her something to the effect that he could not be her lawyer because of this. The exact details of what the Member told M.W. are, again, somewhat unclear but the fact of the basic communication – that the Member could not act for M.W. – was made clear to M.W.
393. Accepting the evidence of J.P., whose observation was that her daughter was “definitely high” on April 13<sup>th</sup> - the day J.P. picked up M.W., the accuracy of the recall of M.W. as to specifics of what was said and when it was said is in doubt.
394. The nose bleed reported by M.W. to her mother and to this Hearing Committee, while very graphic and detailed, may or may not have been induced by the use of drugs, and whether by snorting cocaine or otherwise. An equally plausible or possible explanation, that is totally benign is that the nose bleed was caused by lack of humidity in the Member’s home or caused by a M.W.’s likely state of unwellness arising from M.W.’s recent past history of stress, moving around, not eating properly, smoking, alcohol use and apparent drug use.
395. M.W. could not stay at places she had canvassed before coming to the Member’s house because of the hosts’ concerns about her behaviour and, presumably, concerns about her ongoing drug use.
396. M.W. would not admit that which her mother J.P. stated to be the truth, i.e. that M.W. was not welcome anymore because M.W. continued to use drugs. This omission or avoidance of the truth raises substantial concerns that M.W.’s testimony about matters going to the Member’s alleged misconduct may be nothing more than skillful exaggeration, perhaps combined with a partial suppression of the truth. All that M.W. would say about why she was unwelcome was that she wanted to be in the city, nothing about using drugs and being avoided for that reason.
397. M.W.’s accounting of the origin (more than one drug dealer delivery) and types of drugs, her accounting of the amounts of and Member’s use of the illicit drugs, and pornography, and her accounting of the Member’s alleged improper propositions perhaps are drawn from impaired perception. Or, perhaps, as said before, these are just skillful and knowing exaggerations, laden with hyperbole. Or, perhaps, this testimony is nothing more than artful - but pure - invention. It matters not, because in all events these accounts are not in their totality and in the context in harmony with the preponderance of the probabilities. More likely than not, these perceptions are manifestations of M.W.’s generalized anxiety-stricken state of mind or panic-driven desperation. Or, at bottom, they may simply be nothing more than indicia of the lengths to which M.W. sought to demonstrate her unmitigated anger towards the Member, convinced as she was, all along, that she could make a lot of trouble for the Member.
398. On the material issue as to whether M.W. was under the influence of illicit drugs during her stay at the Member’s house (which would substantially undermine her credibility as her drug use historically caused psychosis), J.P.’s evidence provides some corroborating

evidence. J.P. observed M.W. to be under the definite influence of drugs. J.P. previously had had the benefit of this observational experience. This Hearing Committee accepts that during the time M.W. was in the home of the Member, M.W. was either experiencing very recently drug-induced mental alterations or, in the alternative, was coping with the consequences of previous illicit drug use, either scenario affecting M.W.'s perception and substantially impairing M.W.'s ability to accurately remember and precisely report, without error, events, dates and sequences of occurrences.

399. In August of 2009, the family placed M.W. in a residential treatment facility in Quebec. M.W. denies that she was in trouble at the time. Yet, J.P. says that in the few months preceding this committal, during the time of M.W.'s stay in the women's shelter in April and May of 2009. that although M.W. thought M.W. "was fine", J.P. says that M.W. "wasn't fine".
400. Although M.W. does report in her written statement that the day before court, the Member told her about the Alternative Measures Program, she also reports her extreme displeasure that the Member could not see to it that the mischief charge was simply dropped without further proceedings. M.W. relates that she thought that if a lawyer gives advice, then the lawyer is your lawyer – presumably forever. That is not correct, as there are many instances where lawyers give summary legal advice where clearly they are not retained and there is no intention that the lawyer be retained.
401. M.W. was convinced that the Member would get into trouble with the Law Society of Alberta because he had allowed her to stay at his house, and "he was my lawyer, right?" About these matters, M.W. was - and still is - mistaken.
402. This Hearing Committee finds that the Member did nothing more than take M.W. in, gave her food and shelter and a safe haven (when no one else would, including her own mother) and did all of this in consultation with J.P., with J.P.'s consent. That is not misconduct. That is not sanctionable.
403. On the issue of alleged improper or unprofessional communications, J.P. relates that as she was driving M.W. to her Alder Flats home (prior to the stay at the Member's house), M.W. was telling J.P. about a number of text messages occurring between the Member and M.W. M.W. also relates having "joking" conversations with the Member and seeming to have no difficulties in engaging with the Member on that level, more personally than professionally.
404. Thus, it is possible that when M.W. later thought some of the Member's communications were of an offensive or sexual content, M.W. simply may have been mistaken. J.P. did not see any of the messages and nor was her testimony on these issues allowed in for the truth of their content.
405. The Member categorically denies making any physical or other advances of a sexual nature, ever, in respect of M.W.. M.W. does not indicate that there was any touching, in

fact, whether initiated by the Member or otherwise. The Member says the text messages were about a variety of topics but not for an improper purpose.

406. The Member offered to provide indemnity for a security deposit, period. That is not improper – lawyers can offer financial aid to others (even clients), if the lawyer does not benefit. This was a gratuitous offer, the motivation was to help M.W.. Mom couldn't help because Mom had no spare money and no one else seemed to want to help. M.W. told the Member that in order to restore her schooling grant, she had to have a residence. On this understanding - that the security deposit was the only thing holding M.W. back from returning to school and turning her life around- the Member made his offer, neither expecting nor wanting anything in exchange.
407. In summary, this Hearing Committee throughout has been alive to the evidentiary inconsistencies with which it was faced. The inconsistencies go to the very essence of the Complainant's credibility and undermine the evidence in critical aspects of timing, frequency and content of the alleged misconduct. None of the evidence in respect of Citation 2 is so clear and cogent or convincing that this Hearing Committee is persuaded that the Member is guilty of the misconduct set out in Citation 2.
408. The Member can be criticized, perhaps, for suffering from extreme naiveté and a certain under-appreciation for the myriad of possible negative consequences to becoming personally interested or involved with people whose acquaintance he makes in the courtroom. This Hearing Committee is certain that the Member will never again be so naïve or unaware.
409. The allegations made by the Complainant against the Member involve most serious allegations and grave consequences. The Hearing Committee is reminded, once again, that while there is no heightened standard of proof applicable in civil cases, the more improbable the event the stronger the evidence that is needed to satisfy the balance of probabilities test.
410. This Hearing Committee finds that the Member did fully understand and appreciate that M.W. was a vulnerable person. While in hindsight, the Member's choice to take M.W. into his home may not have been the best choice, it must be noted that it was M.W. who had pleaded with the Member and who told the Member that she had no place else to turn and that she did not want to go to a shelter. By shelter, it must be noted that the Member was given to understand that the type of shelter being contemplated was transitional housing provided to mental health patients upon release from Alberta Hospital. M.W. was adamant that she wanted nothing to do with any such housing or supports or anything else to do with a recognition or acknowledgement that she may have ongoing mental health problems. The Member says that he and M.W.'s mother had the discussion about M.W. moving to an assisted living situation for former Alberta Hospital patients. J.P. says she intended to thank the member for taking her daughter in, temporarily.
411. The Complainant's testimony, however, simply cannot be accepted as trustworthy on material points. The contradictions noted between J.P.'s testimony and M.W.'s

testimony about drug use during the specific time period about which the Complainant now seeks to complain, are simply too troubling and too divergent to form a persuasive foundation for a finding of guilt. Accordingly, the Law Society of Alberta has not met its case.

412. The Member denies that he had any romantic interest in M.W. of any kind and that it was not by reason that he “was getting nowhere with her” (as M.W. puts it) that she had to leave his house. And, while it is probable and plausible that the Member showed M.W. photographs of his property in Costa Rica, as a topic of conversation, there is nothing nefarious in this, per se. It is, however, unlikely that the Member told M.W. that she could “play wife” and could have his baby even if they were not married. Unlikely, because the Member did not plan to live in Edmonton (or Costa Rica) and had never pursued M.W. previously for these purposes. Nor did the Member want M.W. to continue staying with him or otherwise suggest that there was any long term plan in contemplation. Further, the Member says he told M.W. she could not stay long and would have to leave because he was going back up to Grande Prairie where he did most of his legal work. This is not consistent with wanting the Complainant to stay around and “play” wife and mother. M.W. acknowledges the Member told her that he was mostly working out of Grande Prairie but does not connect that reason to why she was returned by the Member to her mother’s care.
413. The Hearing Committee was required to consider the totality of the evidence and to make credibility assessments in the context of the totality of the evidence. By finding that material aspects of the evidence of M.W. are not reliable, this is conclusive of the result. This is not because M.W.’s evidence is inconsistent with the evidence of the Member; rather, this is because the problems with credibility mean that the Law Society of Alberta is unable to persuade this Hearing Committee that its burden of proof, on the requisite balance of probabilities, has been met.
414. Therefore, Citation 2 - where it is alleged that the Member engaged in personal conduct which brings the profession into disrepute and that such conduct is conduct deserving of sanction - is hereby dismissed.

### **Citation 1**

415. In respect of Citation 1, where it is alleged that the Member failed to serve his client and that such conduct is conduct deserving of sanction, the Member quite candidly agrees that it is apparent that M.W. failed to completely understand that he could not have her charges of mischief dropped. For the part he played in that failure of understanding, the Member is sorry.
416. Looking back, the Member says that if he were to do this over again, considering M.W.’s lack of sophistication, he probably ought to have explained in much greater detail exactly

what she needed to do and should have taken greater pains to explicitly walk her through the process. While the Member agrees that criminal clients are entitled to the same service as civil clients, the Member does indicate that although his communications with M.W. might sound very, very casual, that is the practice with charges of this nature. In these minor offence situations, the Member says that the whole process is simply much less formalistic.

417. The Member did have a discussion with M.W. about the Alternative Measures Program, although M.W. cannot recall the exact content of that discussion other than to recall that she was very upset about having the mischief matter go into the court system, at all.
418. It does appear that the matter was ultimately dealt with by the imposition of an Alternative Measures Program disposition.
419. In her interview with the Law Society Assistant Reviewer, on August 7, 2009 (at page 12, lines 13-end and page 13, lines 1-13), M.W. says:

M.W.: I even said to him too - - I was, like, if I have to, I was, like, do you want me to jump on a bus? I was, like, I'll bus it to Sherwood Park. I was, like, I'll just go there. Like, I'll sit in the courtroom. And I was, like, if they call my name and nobody is representing me, I'll - - just because I had, like, that - - the feeling. You know, like, the gut feeling that he wasn't - - that he was just screwing me around.

MS. JENKYNS: Okay.

M.W.: I'm sorry.

MS. JENKYNS: No, no. That's fine. So if you had that impression, what made you not go to your first Court appearance?

M.W.: Because I was in Terwillegar and I don't drive and he told me I didn't have to. So I - - I trusted him, you know. Like, I still had the gut feeling and I was, like, hey, the Court date passed - - I think it was honestly the third day that I was there - - and I said to him, like, are you sure that I don't have to go? Like, I'll bus it. And he said no. So I didn't. You know, like, it's a stupid little charge that why have all this trouble for. Like, I had no problem going. You know, like, I would have wrote a letter of apology. I told him I apologized. But he told me that it was dropped, so - - [Emphasis added]

420. The underlined statement of what the Member said to M.W. seems to vary significantly from M.W.'s statement made April 30, 2009. There she says: "The day before my court date I asked again if I should go. He said no, not to this one. I said what do you mean this one? Why is there another one. He told me I had to do Alternative Measures. I asked why. I said I was sorry, it was stupid, and I will pay for a car wash, there was no damage." Nowhere does M.W. say the Member told her that the charge "was dropped".
421. It is inconceivable that on the one hand, the Member would have advised M.W. that Alternative Measures would have to be completed and, in respect of the same offence, also tell M.W. that the charge had been dropped. It is also obvious that a lawyer cannot force the Crown to drop a charge. This factor lends further weight to the conclusion that the Member did not say this to M.W..
422. The Hearing Committee does find, however, that in the circumstances of this case, M.W. could reasonably have thought she was a client of the Member until she had another lawyer, even if the Member was positive that she was not his client.
423. Mr. Gubbins testified that he was in contact with other lawyers for the purpose of arranging appearances for M.W.'s upcoming charges. Mr. Gubbins said that this was something that he would routinely do for his clients.
424. It is the finding of the Hearing Committee that Mr. Gubbins did take steps to arrange for the appearance of another lawyer on M.W.'s behalf and that this was his bona fide intention, so as to assist M.W., but simply did not follow through to the degree required.
425. The relationship of "client" is defined in the Code of Conduct – generally meaning a person on whose behalf a lawyer renders professional services and with whom the lawyer has a current or ongoing lawyer/client relationship. The Code of Conduct goes on to state that the definition of client may also include a person who reasonably believes that a lawyer/client relationship exists, although one or more of the customary indicia of such a relationship is absent.
426. In Chapter 6, the Code of Professional Conduct lists a number of indicia that may be relied upon in determining whether or not a lawyer/client relationship exists. This Hearing Committee notes that this Chapter of the Code deals specifically with conflicts of interest and prohibitions against a lawyer acting for current or former clients. LSA Counsel submits that it is appropriate to consider that a client is a current client if the lawyer is currently acting for the client and if a reasonable person would believe that the lawyer has an ongoing duty of loyalty to the client.
427. LSA Counsel further submits that from all of the evidence, this Hearing Committee can find that there was an ongoing relationship between M.W. and the Member over a period of years and that the vast majority of their conversations dealt with M.W.'s legal difficulties.

428. With respect, that is not determinative of the issue and nor is deciding whether there was a client/lawyer relationship.
429. M.W. says that she never retained any lawyer other than the Member and considered that the Member was a good lawyer and could help her with her problems and “get her out of trouble”. It is debatable whether the Member was retained here – he told M.W. he could not act.
430. M.W. did reasonably believe that the Member was her lawyer, in that he understood that she had an immediate legal problem and she understood that he was taking the necessary steps to get her court representation. M.W. thought the mischief charge was serious and that is why she called a lawyer.
431. It is submitted that another factor to consider is whether the lawyer took steps to terminate the lawyer/client relationship. Although the Member testified that he told M.W. that he could not act for her, it is clear that she was very much in doubt about the Member’s ongoing involvement and thought that he was on the case. When there is doubt, it is the obligation of the lawyer to clarify whether the lawyer/client relationship is an ongoing one - preferably in writing - so that the client cannot mistakenly believe that the lawyer is continuing to look after the client’s interests, when in fact the lawyer has no intention of doing so and will not do so. Potential client and lawyer must be strictly *ad idem* on this fundamental matter, with no room for misunderstandings.
432. This latter reason, more than any other factor, leads this Hearing Committee to conclude that the Member failed to serve M.W., in the capacity in which he had undertaken to help. This failure to serve pertains, whether or not M.W. could be found to be a client.
433. The Member submits that if the client relationship is made out, he had given his promise as a lawyer that he would take care of that appearance, by asking another lawyer to attend. This Hearing Committee says that the finding of such a relationship, in this case, is not an essential prerequisite to a finding of guilt. In short, whether M.W. was a client or not, the Member in his professional capacity had told her he would help; the help fell short and that caused M.W. unnecessary, if only transitory, concerns.
434. If, for the purposes of jurisdiction, it is necessary for this Hearing Committee to find that M.W. was a current or former client of the Member, it is noted that in respect of the mischief charge the Member did provide M.W. with advice, including advice that M.W. stay away from her neighbour. The Member also described to M.W. the features of the Alternative Measures Program that could save her from a criminal record and he told her that he knew other lawyers (two of them) who could deal with this matter for her. Therefore, until such time as another lawyer took conduct of M.W.’s matter, it is the finding of this Hearing Committee that M.W. was a client of the Member.
435. And, even if this Hearing Committee accepts that in matters such as these, the advice, retainer and recording of the parameters of the Member’s retainer are not “formalistic”,

as the Member put it, there is an abiding obligation on the Member's part to ensure that the client is not mistaken about the lawyer's ongoing involvement in the particular matter of concern and to give the client sufficient information to take steps to secure other representation.

436. It is unclear as to the extent to which the Member took steps to ensure that M.W. had no doubt whatsoever about what he would, could and was prepared to do for her.
437. It is not necessary to go beyond the Member's own admissions and the undisputed facts to find that the Member's conduct was below the standard expected of a reasonable lawyer – the fact is, no one was representing M.W. on April 14, 2009. The Member concedes that he would not be in a position to say he did not let M.W. down. This is candid, and correct.
438. Having said all of that, however, this Hearing Committee finds that while the Member's conduct in this particular instance tends to reflect poorly on the profession, this conduct does not call into question the suitability of the Member to practise law. Nor does this Hearing Committee find that any departure of the Member from an acceptable standard had any significant consequences of any kind either to the public, the Court or to M.W.. Specifically, this Hearing Committee finds that the departure from the acceptable level of service to a member of the public or to a client was unintentional, not wilful.
439. In summary, the Member is found guilty of conduct deserving of sanction in his failure to ensure M.W. had other representation for her court appearance on April 14, 2009 and that such conduct is conduct deserving of sanction.
440. Given that the primary purposes of disciplinary hearings are found in Section 49(1) of the *Legal Profession Act*, and these are the protection of the best interests of the public and protecting the standard of the legal profession generally, while the finding of guilt in respect of one of the citations may seem harsh, this Hearing Committee has throughout borne in mind this purposeful approach to disciplinary proceedings.
441. This Hearing Committee has no concerns whatsoever about the Member's ability to continue practising law, to continue being a lawyer of good character and to continue serving his clients with integrity.
442. The Hearing Committee is certain the Member will be exceedingly careful in similar situations and when giving summary advice. This is a cautionary tale for any lawyer who agrees to help a citizen without a formal written retainer, notes to file, memoranda or witnesses.

#### **L. ADJOURNMENT OF SANCTION PHASE**

443. This Hearing will reconvene to consider sanction and all remaining collateral matters.

DATED this 23 day of ~~January~~ February, 2012.

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Frederica Schutz, Q.C. (Chair)

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Sarah King-D'Souza, Q.C. (Member)

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Wayne Jacques, Esquire (Member)