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 IHOR BRODA
A MEMBER OF THE LAW SOCIETY OF ALBERTA

H. SANCTION AND ORDERS

1. The Additional Evidence Called on the Sanction Phase

544. Dr. R. T-J was called and qualified to give expert opinion evidence in the practice of medicine and family medicine. He was permitted to provide evidence of his dealings with the Member and to provide his opinion respecting the Member's care, treatment and rehabilitation. His affidavit was admitted as Exhibit 368 and included several exhibits. The entirety of the affidavit, the exhibits, and the viva voce testimony of the doctor were considered by the panel. The Dr. expressed, within the affidavit, the opinion that the stress and depression that the Member has suffered for the past seven years has negatively impacted on his health, exacerbated the symptoms caused by his health problems: diabetes, hypertension and sleep apnea, and, also negatively impact on his ability to practice. Recommendations were made for the Member's management.

545. Dr. R. T-J testified, in chief, that he had been the Member's physician since approximately 1984. He confirmed the Member's diabetes, ischemic attacks, a severe form of sleep apnea, and professional burnout. He confirmed the Member's recent loss of weight, and improvement in his diabetes, hypertension, and cholesterol. He has seen recent improvements in the Member's mental processing, cooperation with medical advice, and taking care of himself. He believes that the Member is treatable. The Dr. had questioned the Member about whether the Law Society concern was for misappropriating funds. He wanted to satisfy himself that the Member was not being accused of more serious misbehavior that would require more and longer psychotherapy.

546. In cross-examination, Dr. R. T-J testified that he was not aware that the Member had actually been convicted of 36 citations of misconduct. The conduct that he was aware of was that the Member had discussed with him accounting problems over a period of time, and difficulties in the office. The Dr. was not aware that the details involved the Member's failure to reconcile his trust account for a period of 7 or 8 months. The Dr. was not aware of the 2006 application to suspend the Member, nor was he aware of the conditions that were imposed on the Member. He did not know that the Member had opened files and deceived the Law Society about that. The Dr. was asked if there was anything in the Member's medical conditions that would lead him to deceive. The answer was: "No. Or shall I say that perhaps his judgment under stress might be affected."(Transcript, p.1584) The Dr. expressed the opinion that with appropriate

treatment and some time away from the profession, and with regular medical assessment, he thought the Member would be a capable professional. He estimated a minimum of 6 months absence from the profession. He expressed the opinion that if the member were never returned to practice, it would make his health much worse. The diabetes was long-standing since the early 1990's. The mini strokes and transient ischemic attacks took place in February of 2007. The sleep apnea was first assessed in 2005.

547. The Panel asked the doctor for a medical comment on the aspects of behaviour like deceit, misdirection, failing to respond, and failing to perform other professional obligations. The doctor offered that such was more in the realm of a psychologist's assessment, but as a doctor, some people are so burnt out that they don't have the energy to properly fess up and process their life.

548. In re-examination by Law Society counsel, the doctor was asked if the medical conditions were more likely to have led to sins of omission: inability to respond to the Law Society and clients; but, the medical conditions are unlikely to be sins of commission: actively breaching conditions, misleading the Law Society, and misleading other lawyers? The doctor testified that was: "Quite possible". (Transcript p. 1593)

549. Dr. F.C., a psychologist, was qualified to give expert opinion evidence in the area of psychology and psychological assessment. His report was submitted as Exhibit 370. In chief, Dr. F.C. testified that upon assessment and testing of the Member, Dr. F.C. concluded that there were personality traits that were identified as obsessive-compulsive. Predisposing the Member to think, act and behave in particular ways that are usually predictable and ongoing. The personality traits are not, in and of themselves, necessarily accountable for what subsequently brought about the suspension. He thought that the combination effect of the personality traits, as well as the psychosocial stressors, combined to cause behavioural, emotional, and psychological changes that resulted eventually in the suspension occurring. The doctor described the impact on this personality type that the professional treadmill has. The doctor was of the opinion that the Member's work ethic was excessive, highly responsible, highly conscientious, and highly devoted. There is a very high moral and ethical standard that these types of people generally live by. He offered that the Member had the capacity for rehabilitation, which would generally be prompted in these personality types by an unexpected serious health problem.

550. In cross-examination, Dr. F.C. testified that he did not have any evidence of the Member's personality or psychological state longer than 6 months prior to the December 4th, 2009 meeting with the Member. Further, he was not aware of what the citations were that the Member had been convicted of. The Dr. said that given his assessment, it would surprise him if the Member gave evidence that much of the misconduct had resulted from paralegal mistakes and paralegal errors. Also, he agreed that this type of personality would tend to blame the Law Society for failing to provide the help that the Member thought that he was entitled to. Further, that this type of mindset will give rise to ignoring advice that does not fit within that mindset. When asked if the Member had been allowed to continue practicing under certain conditions, would he honour those

conditions? The Dr. thought that the Member would comply. The Dr. testified that it would come as a surprise to him that the Member was convicted of failings to follow conditions imposed upon him. Further, that the Dr. would be surprised that the Member had also been convicted of attempting to deceive the Law Society about his compliance with those conditions. It didn't fit with the personality that he had outlined. Similarly, it would be a surprise to the Dr. to find out that the Member had been convicted of failing to serve clients. The Dr. agreed that he could not establish a psychological basis for the Member's misconduct. (Transcript, p. 1623)

551. Mr. L.W., a complaints resolution officer with the Law Society, was called. Counsel for the Law Society admitted that the Member was substantially cooperative with Mr. L.W. L.W. agreed that the Member had been substantially cooperative with him. L.W. described the complaints process, and that M.D. was his supervisor. Further, L.W. testified that complaints between the Law Society and a member are not the type of complaint he would be resolving.

552. Mr. C.D., a forensic investigator and auditor with the Law Society, was called. He testified that rule 130 audits, generally referred to as spot audits, are conducted as a verification of compliance to the various accounting rules. On November or December 2006, C.D. went to the Member's office. He went to review the Member's Toronto-Dominion/Canada Trust bank accounts for deposits in November and December. He didn't find anything irregular at that time, deposits were made at the bank and he associated them with client names. He received cooperation from the member and his staff. He was informed that a new trust account had been opened. He did not recall giving any accounting advice. He gives seminars and presentations as a part of the Law Society routine. In doing audits, the procedure is that if the bank reconciliations aren't balanced and current on the day that they attend, the member is given that day to bring them up-to-date and balanced. If not, they are requested to sign an undertaking to stop using the trust account. They may open another account, but they cannot use the previous one until it is completely current and reconciled. C.D. was only involved at the Member's office after the audit, not before. He just did a portion of verification on the deposits, and he didn't do the other audits. At the beginning of April 2007, C.D. also attended the Member's office. It was a follow-up visit because of the disclosures made to Mr. G.A, his supervisor. What C.D. did observe was the strange pattern of the files, which was not a normal consecutive numerical issuing of file numbers. They were not just numbers, but were numbers with letters added to the end of them. This was a different process than what the Member had been doing before. C.D. was suspicious about something unusual happening, and he asked the Member when he came into the office later in the day. At that point the Member acknowledged opening new files.

553. **The Member testified** on his own behalf in the sanction phase. The Member characterized his initial evidence as: "more in terms of explanation of what happened and mitigation rather than in trying to change a verdict of guilty". (Transcript, p. 1680)

554. In respect of citations 1-3, the Member submitted documents (Exhibit 374) in support of his testimony that he had initially had a transfer signed by the client that would allow for title to transfer. The Member submitted that later, after the letter came, he was instructed not to proceed with the transfer. The Member acknowledged that, after the letter came, his conduct was deficient in not pursuing the issue of transferring title. He acknowledged that he failed to advise the client of what the client should be doing.

555. In respect of citations 24-27, the Member submitted documents (Exhibit 375) in support of his testimony that there was an inability to find the file due to the two different names involved:

> "All the correspondence was coming in the name of Z. and the client card that had been opened was under the name of T., and there was no corresponding cross-reference to Z., and that just explains why this particular file took so long to find."

Although it was pointed out that at least one document had both names on it. Further, Exhibit 65 was given as a further example of an office document that had both names on it.

556. Marked as Exhibit 376, were documents respecting the contingency agreement citation. The Member's position was that he had billed her in accordance with the retainer agreement, which he acknowledged was not the way that the Law Society required contingency agreements to be calculated. The Member acknowledged over-billing her by $477, which he submitted were leftover party and party costs. This restitution was made by the Member in the week preceding this testimony on sanction.

557. In general, the Member testified that a number of his practice issues related to his inability to obtain competent staff. The Member entered Trust Reconciliations from December 2005 – June 2006 and related documents (Exhibit 377). The Member maintained that he was putting this forward because it contains an indication that there was a recommendation that the accountant had sought advice from the former head of the Alberta Institute of Chartered Accountants on how the trust reconciliation problem could be rectified. The Member testified that the accountant's recommendation was that the existing trust account be depleted, a new one opened, and the existing one be depleted over time. Thereby, hopefully, the reconciliation problem would resolve itself. The member proffered that he was putting this forward because:

> "…in breaching the conditions [of the Benchers], I followed that approach which was recommended by the accountant. It seemed to be accepted by the Benchers. Now, I have admitted to breaching the conditions, but they were breached in a fashion that was consistent with the recommendation. And it provides an explanation as to what process was followed, that this was not just a thumbing of my nose at the Benchers, but that I was doing it in the fashion that had been recommended. And this is the evidence of the recommendation." (Transcript, p. 1700)

558. The Member submitted that he was explaining: "what efforts were being made to reconcile, to cooperate with the Law Society and why we [he and the accountant] couldn't do it."(Transcript, p. 1704) He did not accept that he "ignored" the Benchers'

orders, the Member characterized it as: "I am saying that it was an orderly breach that was consistent with the intent of the Benchers, although it did not comply foursquare with the conditions." (Transcript, p. 1704) He confirmed that when he started to breach the Benchers' conditions, he did not notify the Law Society that he was not going to follow the order any more. The Member maintained that his testimony was intended to "…explain my state of mind at that time, why that state of mind existed, and that I am trying to both comply with the intent of their conditions and at the same time I have to breach the conditions to accomplish the goal that everybody wanted to achieve." (Transcript, p. 1705) The Member indicated that upon receipt of the conditions, he intended to comply. He tried to comply. "And then I came to the point that I couldn't comply. I would never be able to comply". (Transcript, p. 1706) He acknowledged that when he "couldn't comply", he did not go back to the Benchers to seek an amendment. He maintained that he spoke with two Law Society officers about getting money freed up to pay for office computers but was told that the Executive Director didn't have authority to do that.

559. Respecting the April 2nd, 2007 letter of the Law Society Manager of audit and investigations (Exhibit 373), the member acknowledged that the ten point descriptions therein were: "accurate with the exception they are not complete". (Transcript, p. 1708)

560. The Member referred to the letter of the accountant Mr. B. to the Benchers. The bill from Ms. G. was intended to show that she came in and trained his people. He later found out that his software was pirated when it crashed. There was not enough cash flow to keep everything afloat. He had to cover overhead. He couldn't get new computers. The Member testified: "I can't therefore comply with the Benchers' condition, I am never going to be able to comply." (Transcript, p. 1714)

561. The Member said that he had no other source of income to keep his staff paid, his credit rating was too poor to borrow money, he still owed his parents money, and he couldn't access the fees that he'd already earned. "So I looked at all the alternatives, and the only alternative I felt I had was to earn money so that I could keep everything going and ultimately satisfy the Law Society that the accounts are reconciled and that everything is in order." (Transcript, p. 1716)

562. The Member continued at p. 1717: "I know that I am breaching an order – I mean a direction. But – and I know that I am going to be discovered, and I know that I am going to have to explain it to the Law Society and the only system that I could ***concoct*** at that time was the letter numbering so that these accounts could all be – files could all be traced to existing clients who I have relevant information on their files – I have relevant information." [Emphasis added]

563. The Member went through how he has been cooperating with the custodian of his practice.

564. Respecting the breach of trust condition citation, the Member testified: "And I think I indicated to you I never had an intention to never comply with it, although I agree

with Mr. Watson's questions and submissions at that time that if these things aren't properly dealt with, the practice of conveyancing can't function in the way that it does in Alberta. And I realize that. I made a mistake on that. But that has been rectified." (Transcript, p.1727) Further, respecting his conduct towards the lawyer on the other side of the transaction, the Member stated: "But there was never a permanent intention to breach it, just to try and negotiate it. And unfortunately, I chose the wrong way to do that, and you are correct on that citation." (Transcript, p. 1727)

565. The Member recounted for the Panel, his background information. His schooling in Edmonton, law school at Osgoode Hall, articles, and practice of law were all covered. His summer jobs, the nature of the people that came to him, the number of files that he has worked on, and his difficulty in saying no were also reviewed. His view of his staff was that in the first 25 years he had very qualified and competent staff, but for the last few years it has been a source of frustration. His involvement in the community and politics were revealed, and especially his involvement in Ukrainian and church groups. He also canvassed his acrimonious marital difficulties and its impact on him and his family. He lives above his office and has never built a kitchen. He has not unpacked all of his boxes although it has been years since he moved.

566. He testified that he knows that there are solutions to the problems in his practice, and that he would be willing to pursue them.

567. **In cross-examination**, the Member testified he knew from the Benchers' conditions that he was entitled to make payments out of his mixed trust fund to the beneficial owners of the fund. He also knew that he was not entitled to make payments out of this fund in respect of his fees. He acknowledged that he took the money out in contravention of that condition. He confirmed that there was not anything in the accountant Mr. B's, letter to the Benchers which talked about the Member paying himself fees. Further, the Member opened new files, which was a breach, and again, was not in the accountant's advice or recommendation. He also unilaterally cancelled one of the cosigners to his cheques.

568. The Member acknowledged that he got himself into this mess. He also acknowledged that all practitioners were just as busy as he was at the relevant time. He acknowledged that he was 100% responsible for his staff. He admitted that the client service work, and the responses to the Law Society were his personal responsibility. The Member agreed that the Bencher's conditions were imposed to protect the public and not to benefit him.

569. In order to continue making money, to keep his staff and the system going the Member admitted that he was prepared to breach the conditions of the Benchers. He referred to it as the "least harmful option". (Transcript, p. 1769-70)

570. He confirmed that in the February 12th, 2007 meeting with Mr. A. and Mr. D. of the Law Society he did not tell them that he was opening new files. He admitted that he couldn't say that he was opening new files because then he knew that he couldn't

continue to practice. (Transcript, p. 1772) The Member was further pinned down at p. 1773:

Q. "…the question is were you specifically asked whether or not you had opened new files, and did you specifically say that you had not?

A. I had not. ***I mean I confirm that's correct."*** [Emphasis added]

At p. 1775, respecting the impact of his medical conditions on his practice, the Member expressed that no medical conditions cause misconduct. "It explains it. It doesn't excuse it."

2. Member's Position

571. The Member took the position that he had practiced for 35 years without attaining a discipline record. That he has always been committed to serving his clients. That in respect of a number of individual clients, notwithstanding their complaints, they continued dealing with him. He suggested that these clients were upset that their matters had been dragging on, but that they did not lose confidence in him. He further submitted that a number of the delays occurred in 2006, when the busy nature of practice made it extremely difficult to catch up and report to clients. The Member submitted that no client, other than the file where there was a misapplication of the contingency fee agreement, suffered any financial loss as a result of the member's conduct.

572. The Member acknowledged that Citations 19 and 20 were the most serious. The Member's position was that the conditions were breached at a crucial time. His position was that he acted in the manner that he did, to avoid significant risk of harm. The Member submitted that he couldn't convince the Law Society to free up some money, so he chose to earn the money to enable him to comply with the condition to rectify the harm. Although this meant that there was a breach initially of the accounting rules and subsequently of the imposed conditions, he submitted that there really was no harm to the public and the profession. The Member submitted that the harm thereby avoided was greater than the breach of the conditions.

573. The Member submitted that the most serious harm that was done was the inability to account for the trust money. He argued that he could not find a way to do it, and that his judgment at the time was clouded by everything that was going on, the stress, and his worsening health. The Member's position was that he was doing an orderly breach that would ultimately lead to a conclusion of the matter and an alleviation of the potential harm to the profession. He argued that ultimately he achieved his goal, but along the way, he breached the conditions. He submitted that his intention was to ultimately resolve the problem by eliminating the greatest harm.

574. The Member submitted that he cooperated with the Practice Review Committee, he was glad for their help, but it was not leading to a solution to the problem: reconciliation of the trust accounts. He denied his intention to deceive, because he left a paper trail, and he knew that he would have to answer for it. He submitted that he ultimately lived up to the expectation of the Benchers, who had declined to suspend him

in 2006, by reconciling and proving that no funds had been misappropriated – which was his overriding goal. The Member argued that his conduct evidenced remorse: he knew that he had done something wrong and he was trying to fix the problem.

575. The Member's position on a deterrent sanction was that deterrence applies more towards deliberate, intentional conduct that causes loss to clients.

576. The Member argued that the public would not require that a lawyer should be disbarred, in a situation where there is no misappropriation of funds, where the lawyer is going through personal problems, complications, and stress, and didn't meet every obligation.

577. The Member's position was that, his lack of governability was not caused by ignoring the Law Society, but was more a matter of the Member being unable to meet the expectations of the Law Society. He acknowledged that there was a time where he couldn't be governed the way that the Law Society wanted him to be governed. He argued that governability is in one's head, and that he was governable because he had never lost respect for his colleagues or profession. He submitted that he was weakened in his ability to be governable, but with rehabilitation he would be governable, as he was in the past.

3. **Law Society's Position**

578. The Law Society's position was that a purposive approach to the sanction process be taken. Counsel for the Law Society submitted that the best interests of the public, and the standing of the legal profession are both best protected by an independent and self-governing profession. He argued that if a Member is unwilling to accept governance then they should not be offered the privilege of membership in the Law Society.

579. The Law Society's position was that, when the Member was not suspended by the Benchers in the fall of 2006, the conditions imposed protected the public, and the Member had a duty to the Law Society and to the public to adhere to them. The Member's breach of the imposed conditions was a breach of his duty to the public, as well as a breach of his obligations as a governable member of the Law Society.

580. The Law Society argued that the convictions for failing to respond to clients, to other lawyers, and the failure to meet trust conditions were further evidence of ungovernability. Further, the citations for failing to serve clients would of itself support disbarment.

581. Law Society counsel took the position that neither of the experts called by the Member, were aware of the nature of the conduct that led to his conviction. Counsel argued that if they didn't know what the misconduct was, how could they draw a nexus between the medical conditions or stresses of the Member, and, the misconduct. It was

further argued that it didn't matter what the health issues were, when the Member's breach of the Benchers' conditions, his attempt to deceive, the hiding of that breach, and the unwillingness to accept governance were all present.

582. Law Society counsel argued that the Member has not shown remorse, and is not apologetic to his clients or the Law Society. It was submitted that the Member did not appreciate why the conditions were formulated the way they were in 2006. It was argued that the Member lacked the insight that he needs to continue practicing, and the Benchers conditions were imposed to deal with the risk that his conduct caused to the public, the profession, and his clients. The Law Society is seeking the disbarment of the Member.

4. Consideration of Sanction

583. The Law Society Hearing Guide prescribes, in paragraph 51, that the primary purpose of disciplinary proceedings is described in s. 49(1) of the *Legal Profession Act*:

1. the protection of the best interests of the public (including the members of the Society), and,
2. the protection of the standing of the legal profession generally.

584. The sanctioning process involves a purposive approach employing those factors which relate most closely to the fundamental purposes will be weighed more heavily. The sanction must be one which is consistent with the fundamental purpose.

585. Further, the Law Society Hearing Guide refers to the essential nature of the ability to govern the profession. Without it, self-governance is put at risk. Paragraph 77 specifically describes five types of conduct which undermine this ability to govern:

1. failing to respond to those involved in the Law Society process
2. failing to be candid with those involved in the Law Society process
3. failing to cooperate with those involved in the Law Society process
4. breaching an undertaking given to those involved in the Law Society process
5. practicing while suspended or inactive

586. Eleven of the citations related to a failure by the Member to respond on a timely basis to his clients (2, 5, 12, 14, 21, 24, 26, 35, 39, 44, & 48). Two of the citations related to a failure by the member to respond on a timely basis to another lawyer (1 & 29). One of these citations related to the Member's breach of trust conditions imposed by another lawyer (28). Fifteen further citations related to either the failure of the Member to respond on a timely basis to the Law Society, or a failure to cooperate with the Law Society by not providing his file to them (13, 15, 23, 27, 30, 32, 33, 37, 41, 42, 45, 46, 49, 50, & 53). One citation related to the failure of the Member to the Public Trustee's Office (36). The remaining citations upon which he is being sanctioned relate to the Member's breach of the conditions imposed by the Benchers of the Law Society (19), the Member deceiving or seeking to deceive the auditors of the Law Society(20), the breach of trust conditions imposed by another lawyer (28), the Member's failure to follow the Rules of the Law Society regarding his filing of the S and T forms (31), the Member's

failure to comply with the Rules of the Law Society and the Rules of Court in rendering an account on a contingency agreement (40), the Member's failure to follow accounting rules and rectify deficiencies (54), and the acceptance by the Member of cash from a client in excess of that permitted by Law Society rules (56).

587. The Member has breached each of the first four of these described types of conduct. Further, the types of conduct circumscribed, are not limited to the five types delineated in the paragraph. And, in this Member's case, we have a further type of exhibited conduct: practicing, while restricted with conditions imposed by the Benchers of the Law Society, outside the scope of those conditions.

588. Citations 19 and 20, described in paragraphs 181 through 229 of the Hearing Report (Exhibit 363) detail the evidence and findings of the Panel. Therein it describes the conditions imposed on the Member by the Benchers on October 19, 2006, upon an application by the Law Society for suspension pursuant to s. 63 of the *Legal Profession Act*. The Member stopped using other lawyers as cosigners at the end of February 2007. He therefore was issuing cheques on his trust account in contravention of the conditions imposed in the October 19th order of the Benchers. Further, between January 2007 and by the end of March 2007 the member had opened 110 new files, in contravention of the Order not to open new files. Additionally, the Member was not to pay himself any fees from the old trust account. Yet by the end of February 2007 the Member paid out approximately $79,000 from that trust account. The Member did leave the funds in this new special holding account, but, nevertheless, he paid his fees from the old trust account without the consent of the Benchers and in violation of their order. While meeting with Law Society representatives on February 12, 2007, the member falsely represented that he had not taken on any new files since October 2006. Further, the Member created a new practice or scheme of using old file numbers but employing a further letter designation to identify them. The Panel found that this scheme was established for the purpose of creating an impression that no new files were being opened. This was also consistent with the misrepresentation to the Law Society on February 12th, 2007 that no new files had been opened. We must regard the breach of these conditions, reflected in these two citations, as most serious. It bears directly and persuasively on the governability of the Member. The conduct reflects most unfavourably upon his integrity. Given this further chance to rectify his accounts, this reprieve was not accepted with solemnity and strict adherence to the conditions and purpose that one must expect. It was not casual variance with the conditions. There was no inadvertent or unintentional breach. It was purposeful, selfish, and deceitful. We reject the Member's characterization of this being an "orderly" breach consistent with the intent of the Benchers. The Benchers "intent" was made clear in the conditions. The intent of the Member was made clear in his conduct.

589. The Panel has reviewed the cases cited within the Hearing Guide in paragraphs 79-82. In *Law Society of Upper Canada v. Bronstein*, 1994 L.S.D.D. No. 10, at p. 19, the following is cited:

> "Deliberate breaches of an undertaking to the Law Society, involving a lack of cooperation with the professional governing body and the unauthorized practice

of law, cannot be tolerated if the Law Society is to regulate its members in the public interest."

590. The Member did not give Dr. R. T-J a proper appreciation of the scope and nature of the misconduct. Dr. R. T-J testified that he was not aware that the Member had actually been convicted of 36 citations of misconduct. The conduct that he was aware of was that the Member had discussed with him accounting problems over a period of time, and difficulties in the office. The Dr. was not aware that the details involved the Member's failure to reconcile his trust account for a period of 7 or 8 months. The Dr. was not aware of the 2006 application to suspend the Member, nor was he aware of the conditions that were imposed on the Member. He did not know that the Member had opened files and deceived the Law Society about that. The Dr. was asked if there was anything in the Member's medical conditions that would lead him to deceive. The answer was: "No. Or shall I say that perhaps his judgment under stress might be affected."(Transcript, p.1584)

591. Dr. F.C. testified that he did not have any evidence of the Member's personality or psychological state longer than 6 months prior to the December 4th, 2009 meeting with the Member. Further, he was not aware of what the citations were that the Member had been convicted of. The Dr. said that given his assessment, it would surprise him if the Member gave evidence that much of the misconduct had resulted from paralegal mistakes and paralegal errors. Also, he agreed that this type of personality would tend to blame the Law Society for failing to provide the help that the Member thought that he was entitled to. Further, that this type of mindset will give rise to ignoring advice that does not fit within that mindset. When asked if the Member had been allowed to continue practicing under certain conditions, would he honour those conditions? The Dr. thought that the Member would comply. The Dr. testified that it would come as a surprise to him that the Member was convicted of failings to follow conditions imposed upon him. Further, that the Dr. would be surprised that the Member had also been convicted of attempting to deceive the Law Society about his compliance with those conditions. ***It didn't fit with the personality that he had outlined.*** Similarly, it would be a surprise to the Dr. to find out that the Member had been convicted of failing to serve clients. The Dr. agreed that he could not establish a psychological basis for the Member's misconduct. (Transcript, p.1623)

592 Upon a review of the medical evidence and personal history of the Member the Panel finds that this evidence is of little mitigation to the conduct of the Member. The Doctors were not in any measure aware of the actual conduct of the Member to assess it in critically professional terms. Neither of the experts called by the Member, were aware of the nature of the conduct that led to his conviction. If they didn't know what the misconduct was, they could not draw a nexus between the medical conditions or stresses of the Member, and, the misconduct. Further, the Member himself expressed that no medical conditions caused his misconduct at p. 1775. The Member offered that the impact of his medical conditions on his practice were an explanation, not an excuse. The Panel finds that the medical conditions provide little explanation for his misconduct. The Member's intentional and repeated breaches of the Benchers' conditions, and his

deception of the Law Society staff, were evidence of his unwillingness to accept governance by the profession. The conduct was intentional and purposeful.

593. The Member in his testimony tried to deflect much of the responsibility for the practice issues onto his staff. While he paid lip service to his responsibility as the lawyer, the content of his testimony bore out his deflection onto his staff. The Member himself is responsible. Any deficiencies in the staff's conduct, is a direct reflection upon the Member's failure to instruct, supervise or train them properly.

594. The Member also tried to deflect some responsibility onto the Law Society. We reject these suggestions by the Member. The Member is and was responsible for his own conduct. His actions were not done with the approval, condonation, or acquiescence of the Law Society. It was all done in contravention of the Law Society Rules, and carried out with deceitful purpose.

5. Decision on Sanction

595. Counsel for the Law Society submitted that the best interests of the public, and the standing of the legal profession are both best protected by an independent and self-governing profession. He argued that if a Member is unwilling to accept governance then they should not be offered the privilege of membership in the Law Society. We agree.

596. We also agree with Counsel for the Law Society that when the Member was not suspended by the Benchers in the fall of 2006, the conditions imposed were intended to protect the public, and that the Member had a duty to the Law Society and to the public to adhere to them. The Member's breach of the imposed conditions was a breach of his duty to the public, as well as a breach of his obligations as a governable member of the Law Society. The convictions for failing to respond to clients, to other lawyers, and the failure to meet trust conditions were further evidence of ungovernability. The citations for failing to serve clients support disbarment.

597. Given the repetitive and persistent conduct of the accused towards the Law Society representatives and process, the Panel cannot have any confidence that the future with this Member, were he to be reinstated, would be any different. While the medical and related evidence provides a backdrop or insight into some of the circumstances surrounding its commission, the fact of the matter is that his conduct was willful and flagrant. His community involvement is laudable, dated, and of little impact when measured against the breadth and seriousness of the misconduct. The Member's conduct was purposeful and self-indulgent. It also had a quality of arrogance to it, in that it was conduct performed in the face of Bencher imposed conditions on his practice which were ignored in strong measure. In the face of this persistent and intentional conduct, what confidence could the Law Society, the public, and other Members have in the Member should he be permitted to practice? The answer we have unanimously come to is that confidence in the integrity of his continued practice would be misplaced.

598. **We order that the Member be disbarred.**

6. Costs

599. The Panel considered that the Member admitted responsibility on a number of the citations ***during*** the course of the hearing. The Panel considered that the Law Society discontinued, or did not seek conviction, in a number of the citations. In most instances, this was as a result of the acceptance of responsibility by the Member on a related citation. The Panel considered that a number of the citations were dismissed. The length of the proceedings, were principally the responsibility of the Member. The tenor and number of his applications and arguments, the length of his explanations, and the blending of evidence and argument were the principal factors affecting the length of the hearing.

600. The Member shall bear the entire costs in respect of this hearing of: $31,748.30. Time to pay is given to September 2, 2010.

DATED this 3rd day of March, 2010.

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Brian Peterson Q.C. (Chair)

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Fred Fenwick Q.C. (Bencher)

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Scott Watson Q.C. (Bencher)