IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF AJAY JUNEJA, A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

Mr. Ajay Juneja, a Member of the Law Society of Alberta, faced 14 Citations. Of the 14, 9 Citations were dismissed. Those dismissed were the allegations of lack of courtesy; misappropriation of client funds; deceiving the LSA by preparing a false statement of account and false trust bank reconciliations; failing to co-operate with the LSA's appointed custodian; lack of candour; commissioning and filing with the Court, an affidavit knowing it to be false given that an exhibit attached thereto was created by the Member for the purpose of deception; and lack of candour with the LSA regarding the exhibit. The Member admitted guilt of his failure to reconcile his Trust Accounts. The Member was found guilty of 4 citations. The findings of guilt were for the breaching of undertakings given to the LSA; breaching Trust accounting rules; breaching his undertaking to C.N. and breaching a Court Order directing him to maintain designated Trust funds in his Trust Account. Sentencing of the Member was deferred to a later date.

INTRODUCTION

[1] On February 11, 2013, a Hearing Committee Panel (the Panel) of the Law Society of Alberta (LSA) convened at the LSA office in Edmonton to inquire into the conduct of Ajay Juneja (Mr. Juneja), a Member of the LSA. The Hearing occurred over the next 2 weeks, with the Hearing phase concluding on February 22, 2013 with the verbal decision of the Panel on the Citations with written reasons to follow. The LSA was represented by Ms. Tamara Friesen (Ms. Friesen). The Member attended, accompanied by counsel, Mr. Simon Renouf, Q.C. (Mr. Renouf).

PRELIMINARY MATTERS

[2] The Chair introduced the Panel and asked the Member and Counsel for the LSA if there was any objection to the constitution of the Panel. There being no objection, the Hearing proceeded.

[3] Exhibits J1 through J5, consisting of the Letter of Appointment of the Panel; the Notice to Solicitor pursuant to section 56 of the *LPA*; the Notice to Attend to the Member; and the Certificate of Status of the Member with the LSA established, *inter alia*, the jurisdiction of the Panel.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(a) and Rule 96(2)(b) of the Rules of the LSA (Rules) pursuant to which the Director, Lawyer Conduct

of the LSA, determined that the persons named therein were to be served with a Private Hearing Application was entered as Exhibit J5. Ms. Friesen advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

BURDEN OF PROOF

[5] In opening statements, Ms. Friesen advised that the burden of proof was on the LSA. This burden may be discharged on the "balance of probabilities"; there is no sliding scale of proof. Ms. Friesen argued that as this is an administrative hearing not a criminal trial, the proof required is not one of beyond a reasonable doubt. The standard is no higher where deceit is alleged. Ms. Friesen argued that the burden of proving that money or other property has been properly dealt with shifts to the Member when it has been established that the Member received money, in trust, in accordance with section 67 of the *Legal Profession Act (LPA)* which states:

> "When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member."

DISCLOSURE OF INVESTIGATOR'S NOTES

[6] Mr. Renouf, Q.C., sought disclosure of various notes of the LSA Investigator. The issues were whether certain notes of the LSA Investigator were producible for inspection by the Member or if the typewritten report created from the Investigator's notes was sufficient. Ms. Friesen argued that the disclosure rules for administrative tribunals are not the same as in criminal matters. As the notes were voluntarily produced by the LSA, it was not necessary for the Panel to rule on the issue of disclosure of the notes.

CITATIONS

[7] The Member faced the following 14 Citations:

1. It is alleged that the Member failed to be courteous, and such conduct is conduct deserving of sanction.

2. It is alleged that the Member failed to follow Law Society trust accounting rules; and such conduct is conduct deserving of sanction.

3. It is alleged that the Member misappropriated clients funds; and such conduct is conduct deserving of sanction.

4. It is alleged that the Member breached undertakings given to the Law Society; and such conduct is conduct deserving of sanction.

5. It is alleged that the Member deceived the Law Society; and such conduct is conduct deserving of sanction.

6. It is alleged that the Member failed to co-operate with the custodian contrary to the conditions imposed by the Benchers on September 7, 2010; and such conduct is conduct deserving of sanction.

7. It is alleged that the Member failed to be candid with P. J. and such conduct is conduct deserving of sanction.

8. It is alleged that the Member breached the Law Society trust accounting rules, including failing to maintain adequate funds in his trust accounts to meet his trust obligation; and such conduct is conduct deserving of sanction.

9. It is alleged that the Member breached his undertaking to C.N. and such conduct is conduct deserving of sanction.

10. It is alleged that the Member breached a Court Order directing him to maintain certain designated funds in his trust account; and such conduct is conduct deserving of sanction.

11. It is alleged that the Member commissioned an Affidavit knowing it to be false; and such conduct is conduct deserving of sanction.

12. It is alleged that the Member filed with the Court an Affidavit knowing it to be false; and such conduct is conduct deserving of sanction.

13. It is alleged that the Member prepared, in his own hand writing, a document with a view to deceiving others into believing it was prepared by and came from a third party; and such conduct is conduct deserving of sanction.

14. It is alleged that the Member failed to be candid with the Law Society by denying that the document in question was prepared by him and such conduct is conduct deserving of sanction.

WITNESSES

[8] Testimony was heard from:

Glen Arnston,	LSA Manager of Trust Safety
Lisa Atkins,	LSA Auditor
Loreen Austin,	LSA Forensic Accountant
B.A.,	The Member's conveyancing paralegal
A.P.,	The Member's office manager
Tellal Johma,	Barrister and Solicitor (worked in association with the Member at the material time)

Parm Johal,	Barrister and Solicitor (worked in association with the Member at the material time)
Paul McLaughlin,	LSA Custodian of the Member's practice
Les Peace,	Hand Writing Expert called by the LSA
Richard Taylor,	LSA Field Auditor
Ajay Juneja,	The Member
Kenneth J. Davies,	Hand Writing Expert called by the Member

[9] The results of the Hearing may be summarized as follows:

Citation 1: Failing to be courteous

[10] The LSA called no evidence demonstrating that the Member failed to be courteous. Citation 1 is dismissed.

Citation 2: Failing to follow LSA trust accounting rules

[11] An Agreed Statement of Facts was tendered to the Panel regarding Citation 2. In summary, the Member agreed that:

(a) he failed to reconcile his trust accounts;
(b) he deposited trust monies into his law firm's general account; and,
(c) he failed to file his form T from 2006 to 2010.

[12] Additional evidence was presented by the LSA that:

(a) approximately $59,000 of retainers were deposited into the general bank account, not into the law firm's trust account;
(b) about $14,000 was transferred back into the law firm's trust bank account; and
(c) on December 17, 2008, the Member rendered 29 statements of account ranging in value from $1000.00 to $2500.00, totaling $45,000 that were inordinately brief and contained no detail as to when services were performed.

[13] The Panel found the Agreed Statement of Facts to be in a form acceptable to it. In addition, the Panel found that the Member's handling of some retainers and accounts resulted in further breaches of the accounting rules. As such, on Citation 2, the Member is found guilty of conduct deserving of sanction.

Citation 3: Misappropriation of Client Funds

[14] The LSA argued the Member was guilty of the following misappropriation of client funds when:

(a) He withdrew $400.00 cash from an ATM on December 30, 2009 from an account that was being used to process trust funds.

(b) He converted the sum of $32,475.80 by transferring the said amount from his trust account on March 19, 2010 to his business operating account xxx-xxx-x and thereafter using part of those funds for the payment of operating expenses and other payments.

[15] The Panel finds these charges are not proven. Citation 3 is dismissed.

Citation 4: Breach of undertakings

[16] The LSA argued the Member was guilty of breaching three of four undertakings given to the LSA.

[17] The Panel finds that the Member breached one of the undertakings given to the LSA regarding the use of the law firm's bank accounts. In particular, the Member continued to use a trust account for real estate files subsequent to giving his undertaking that he would not do so. As such, on Citation 4, the Member is guilty of conduct deserving of sanction.

Citation 5: Deceiving the Law Society

[18] The LSA argued that the Member had deceived the LSA in that:

(a) he prepared a false statement of account; and
(b) he prepared false trust bank reconciliations.

[19] The Panel finds these charges are not proven. Citation 5 is dismissed.

Citations 6 and 7: Failure to co-operate with the custodian and failure to be candid with another Member

[20] The LSA alleged that the Member failed to co-operate with the custodian. It was alleged that the Member was subject to stringent conditions pursuant to an Order granted on September 13, 2010, appointing a custodian for the Member's practice. The LSA alleged that the Member removed an open file list prepared by Parm Johal (indicating which files had trust monies attached to them) contrary to the explicit instructions of the custodian.

[21] The LSA alleged that the Member had failed to be candid with another member, Parm Johal, by failing to alert Parm Johal to the seriousness of the LSA's proceedings against him or by downplaying the seriousness of such proceedings.

[22] The Panel finds these allegations are not proven. Citations 6 and 7 are dismissed.

Citations 8 and 9 –Breach of undertaking and trust shortage

[23] The LSA alleged that the Member breached the LSA Trust accounting rules including a failure to maintain adequate funds in his Trust Accounts and breach of an undertaking.

[24] The Member is guilty of Citations 8 and 9 and his conduct is deserving of sanction.

Citation 10: Breach of Court Order

[25] The Member was entrusted with keeping the sum of $11,500.00 in his trust account pursuant to the Orders of Master L.A. Smart dated January 11, 2005 and June 7, 2006, respectively, in action number XXXX-XXXXX.

[26] The Panel found as a fact that on August 1, 2006, the funds were paid to the Member's clients in breach of the Court Order. As such, the Member is found guilty of Citation 10 and his conduct is deserving of sanction.

Citations 11–14: Commissioning an affidavit knowing it to be false, preparing a false document, and failing to be candid with the LSA in denying the document was prepared by him

[27] The LSA did not provide cogent evidence sufficient to prove that the Member created a false document (Invoice). Having failed to prove, on a balance of probabilities, that the Member created the Invoice, the allegations that the Member commissioned and filed a false affidavit and that he lied to the LSA in stating he did not prepare the Invoice fails. Citations 11 through 14 are dismissed.

EVIDENCE, ANALYSIS AND FINDINGS

Citation 1: Failing to be courteous

[28] The LSA called no evidence in support of this Citation. As such Citation 1 is dismissed.

Citation 2: Failing to follow LSA trust accounting rules

[29] The following Agreed Statement of Facts, dated February 11, 2013 and signed by the Member, was tendered to the Panel regarding Citation 2:

> **FACTS:**
>
> 1. On September 27, 2011, the conduct committee referred the following conduct to a hearing:
>
> *The member failed to follow law society accounting rules;*
>
> 2. The rule 130 audit on Juneja's law firm was commenced on November 18, 2008.
>
> 3. On May 12th 2009, Glenn Arnston, then Manager of Audit Investigations, wrote a memo to Maurice Dumont, Manager Complaints, referring the matter

into the conduct stream due to the "magnitude of the problems encountered" and an investigation order was issued accordingly. **(Exhibit 2)**

4. Juneja failed to follow Law Society accounting rules in three ways:

    A. He failed to reconcile his trust accounts;
    B. He deposited trust monies into his law firm's general account; and
    C. He failed to file his form T from 2006 to 2010.

A. Failure to Reconcile Trust Accounts

5. Juneja cannot provide completed trust reconciliations that conform to the *Rules of the Law Society of Alberta* for his R. trust account, **xxx xxx x**, opened in September 2005.

6. On June 22, 2012 the custodian applied for an Order regarding disposition of Juneja's trust money, indicating that it would be unreasonable for him to continue his efforts to complete trust reconciliations.

7. The amount of money that flowed through that account from the time it was opened to May, 2009, totalled over $86 million dollars.

8. That $86 million dollars remains unreconciled to date.

9. As of December 1, 2011, the Custodian, after attempting to reconstruct or reconcile all accounts, determined there is net surplus of approximately $19,000.00 in Mr. Juneja's trust account.

10. While there are outstanding assurance fund claims against Mr. Juneja, they amount to less than $10,000.00. To date, the LSA is not aware of any other outstanding claims for trust money.

B. Trust monies Deposited to the General Bank Account

11. Juneja had a regular practice of depositing retainer money into his general accounts, when this money should have been deposited into his trust accounts, until the Rule 130 Audit in 2008 **(Exhibit 3)**

12. Over a nine month period, from October 1, 2005 to June 30, 2006, $8,714,007.18 (over $8 million dollars) of trust money was deposited into **Gen Acct xxx xxx x**. **(Exhibit 4)**

13. During the same period, $1,826,562.64 of trust money was deposited into Juneja's Trust Acct **xxx xxx x**. **(Exhibit 5)**

C. Failure to File Forms T

14. Juneja has not filed his Law Firm's Forms T for the years 2006 to 2010.

ADMISSION OF FACTS AND GUILT

15. Mr. Juneja admits as fact the statements contained within this Agreed Statement of Facts for the purpose of these proceedings.

16. For the purposes of section 60 of the *Legal Profession Act*, the Member admits his guilt to Citation 2, and that the conduct in question amounts to conduct deserving of sanction."

[30] The purpose of completing trust reconciliations is to:

(a) prove that there are sufficient funds in the trust account;
(b) compare trust assets to trust liabilities; and
(c) detect errors and shortages.

[31] Reconciliations must be completed regularly to ensure that errors and shortages are detected in a timely manner. This is the reason for the month end procedures regarding trust accounts set out in the Rules. Trust reconciliations must be signed on each trust account within 30 days of month end. The reconciliation must be completed even if there is no activity on the account. The month-end procedures include completion and review of the following:

(a) reconciliation (must be signed and dated within 30 days of month end);
(b) transfer ledger (to determine trust funds moving between related client files);
(c) trust listing; and
(d) trust journal.

[32] At the material time, in addition to the monthly accounting, there were year-end procedures requiring completion including these procedures:

(a) Form S (Annual Law Firm Report); and
(b) Form T (Annual Accounts Report).

[33] The Member came to the attention of the LSA because he had not filed his Form T for 2006 and 2007. An audit was undertaken by an LSA Field Auditor on November 18, 2008. The Field Auditor noted that the Member's Trust account reconciliations were only prepared to August, 2008 and that there was a shortage in the Member's trust accounts. As the Member was one month behind in his reconciliation the LSA sought and received an undertaking from the Member to cease using R. account # xxx xxxxx xxxxxxx and R. account # xxx xxxxx xxxxxxxxx (as per the Form U). **(Exhibit 8)**

[34] The Field Auditor returned to the Member's office on December 16, 2008. At that time, he noted that the October trust reconciliation had not been completed. Another month had passed from the time of the Field Auditor's first visit resulting in a further month of reconciliation being required. The Field Auditor, among other things, noted in his Summary of Reportable Exceptions **(Exhibit 9B)** that the September and October trust account was now balanced. In the result, the Member was relieved of the November 18, 2008 undertaking. **(Exhibit 8)**

[35] On February 9, 2009 the field auditor prepared a draft report for the Manager of Audit and Investigations to review. In March 2009 additional items were requested from the Member.

[36] During the course of the audit it was determined that:

(a) at the commencement of the audit the books and records were for one month in arrears;
(b) the original trust reconciliations did not balance;
(c) approximately $59,000 of retainers were deposited into the general bank account rather than into the law firm's trust account;
(d) about $14,000 was transferred back into the law firm's trust bank account; and
(e) statements of account totaling $45,000 were rendered on December 17, 2008 to support leaving the remaining balance of funds in the general bank account. 29 accounts in total ranged in value from $1000.00 to $2500.00, were very brief and no dates were provided as to when the services were performed.

[37] On June 10, 2009 a further undertaking was requested from the Member **(Exhibits 17 and 18)** regarding R. Trust Account xxx xxxxx xxx-xxx-x (the same as the November 18, 2008 Undertaking) and R. Trust Account xxx xxxxx xxx-xxx.

[38] The Member did not take issue with the findings of the audit and, in fact, stated in his letter to the LSA of June 17, 2009 that:

> "the factual assertions contained within (the Manager of Audit and Investigation's) correspondence are entirely accurate… It is specifically admitted that retainers for legal services were deposited into our firm general account upon receipt, as opposed to our firm's trust account... It is also expressly admitted that we had failed to follow the accounting rules of the Law Society of Alberta, and our trust accounts were not reconciled." **(Exhibit 3)**

[39] The Member is in breach of Rule 119.36 (4) which states:

> "The financial records for trust money shall consist of at least the following:

(a) chronological trust journal of all trust receipts and trust withdrawals, and all transfers between individual client ledgers showing the following details;
    (i) the date of receipt or date of withdrawal,
    (ii) the source of the trust money received or the name of the payee to whom the trust payment or withdrawal is made,
    (iii) the form in which the money is received,
    (iv) the client name and/or file number,
    (v) in the case of transfers between individual client ledgers, the client name and file number for both the source and destination of the trust money between client files,
    (vi) the receipt or cheque number,
    (vii) the amount of the receipt, withdrawal or transfer, and
    (viii) a running balance of the total amount in trust;

(b) a trust ledger consisting of separate trust ledger accounts for each client matter in respect of every client from whom the law firm has received trust money or on whose behalf or at whose direction or order the law firm has received trust money, with each trust ledger account showing;
    (i) the name, matter description and file number of the client,
    (ii) all receipts and withdrawals, in chronological order with the dates of receipt and withdrawal and indicating the source of the money or the payee, the receipt or cheque number, if applicable, and a description of the nature of the receipt or withdrawal, and
    (iii) the running balance of the amount remaining in the account;

(c) a journal showing all transfers of money between trust ledger accounts or a chronological file of copies of all documents by which transfers of money between trust ledger accounts were effected;

(d) a comparison prepared within 1 month of the last day of each month, between the total of the trust accounts of the law firm and the total of all unexpended trust balances as per the trust ledger accounts, together with the reasons for and steps taken to correct any differences, supported by
    (i) a detailed bank reconciliation including the disclosure of the balance per bank account, deposits in transit, outstanding cheques itemized by date, cheque number, payee and amount and any other items necessary for the reconciliation which would be fully detailed and explained, and
    (ii) a detailed listing made monthly by trust account showing the unexpended balance of money in each trust ledger account;

(e) a general journal showing;
    (i) the date of receipt or date of withdrawal,
    (ii) the source of the general money received or the name of the payee to whom the general payment or withdrawal is made,
    (iii) the form in which the money is received,
    (iv) the client name and file number, if applicable,
    (v) the receipt or cheque number,
    (vi) the amount of the receipt, withdrawal or transfer, and

(vii) a running balance of the total amount in the general account;

(f) a separate billing journal showing all fees and charges to clients, the dates of the statements of account for those fees and charges and the names of the clients;

(g) a chronological fees and disbursements receivable ledger to record the law firm-client position for each client, showing statements of account rendered, payments on account and a continual running balance owing;

(h) bank statements or passbooks, negotiated cheques, printed digital images of negotiated cheques, transfers between accounts and detailed duplicate deposit slips for all trust accounts and general accounts, bank advices, credit card slips, interac slips invoices and such parts of client files that are necessary to support the financial transactions;

(i) a central record of all non-monetary client trust property received from and returned to the client by the law firm. (The Law Society of Alberta, *The Rules of the Law Society of Alberta*, Alberta: Law Society of Alberta, 2012 part 5, 119.36(4))

Citation 3: Misappropriation of Client Funds

[40] The LSA argued the Member misappropriated client funds in that:

(a) He withdrew $400.00 cash from an ATM on December 30, 2009 from an account that was being used to process trust funds (the ATM withdrawal).

(b) He converted the sum of $32,475.80 by transferring the said amount from his trust account on March 19, 2010 to his business operating account xxx-xxx-x and thereafter using part of those funds for the payment of operating expenses and other payments (the P. funds).

The ATM Withdrawal

[41] December 30, 2009 was the Member's birthday. It is undisputed that the Member made a $400 ATM cash withdrawal from his trust account via a bank machine creating a shortage in his trust account. He had used this bank machine before. It was the Member's practice to use the same PIN for his accounts.

[42] The Member testified that he made a mistake. His evidence is that he either used the wrong card or selected the wrong account.

[43] The LSA submits the Member took the $400 from his trust account and did not replace it because he "didn't care" or "didn't worry about trust shortages … because he thinks that he has enough money in both his general and trust accounts --- and possibly even his personal accounts --- to cover his trust debts, that's good enough."

[44] There is no evidence that the Member did not care. There is ample evidence that the Member did not follow accounting rules. It is the finding of the Panel that more likely than not, that is probably what compounded the situation here. Regardless, we accept the Member's evidence that he made an honest mistake. His explanation of the

events rings true. This appears to have been a one-time error and is not, in and of itself, conduct deserving of sanction. This allegation is dismissed.

The "P" Funds

[45] It is undisputed that, at the material time, the pay cheque for the Member's assistant was dishonoured because there was a shortage in the Member's general account. In addition, a cheque for $10,000.00 was written, at the material time, from the firm's general account to a client.

[46] It is undisputed that trust funds from another client ($32,475.80) (cash to close in a real estate transaction) were deposited into the general account, not into trust. A similar sum was dispersed to another law firm (that Firm) on the same day resulting in a trust shortage. The Member's assistant thought the money had gone into trust and paid out the same to that Firm to complete the purchase transaction.

[47] The Member's office manager filled out the deposit slip for the deposit of the trust money to the general account.

[48] The LSA argued that the Member's office manager prepared the deposit slip at the direction of the Member and that his motive for requesting this was to facilitate the payment of his payroll and the payment of $10,000 from his general account to another client. The LSA further contends that on March 19, 2010, the Member knew that his trust account was in overdraft and he knew his trust account balance was approximately $50,000. In support of this contention, the LSA argued that the Member must have been very much alive to what was going in on in all his bank accounts because he had signed an undertaking regarding his accounts to the LSA that very day.

[49] The Member's evidence is that he did not personally write the replacement payroll cheque for his assistant. The Member testified that he had no motivation to take money from the trust account. At the time that the alleged misappropriation occurred, the Member had over $59,000 in his general account. In fact, the March 19, 2010 bank statement indicated a balance of $59,575.85. The Member testified that he had no intention to do anything inappropriate. Further, his office manager was the one who had filled out the deposit slip and sent the money to the bank.

[50] When asked whether the Member gave a direction to the office manager to deposit the trust funds into the general account the Member replied "absolutely not".

[51] It is clear the Member was not in compliance with the accounting Rules and his accounting practices were deficient. There is no cogent evidence to substantiate the LSA's allegation that the Member's office manager completed the deposit slip at the direction of the Member and that his motivation for requesting this being done was to facilitate the payment of his payroll and the payment of $10,000.00 from his General Account to another client. The Panel accepts the Member's evidence that he did not give a direction to the office manger to deposit the Trust funds into the General Account. The Panel accepts the Member's evidence that he did not personally write the replacement

payroll cheque for his assistant. Furthermore, the Member's evidence was compelling in that he showed he had no motivation to take money from the Trust Account given that the Member had a balance of $59,575.85 available to him from his own funds. The Panel accepts the Member's evidence that he had no intention to do anything appropriate.

[52] This allegation is dismissed.

Citation 4: Breach of undertakings

[53] The Member gave 4 undertakings to the LSA regarding his accounts. Essentially, the undertakings are very similar and contain wording, among other things, that the Member undertakes "to cease to use in any manner the following trust accounts …". Reference is made in each Undertaking to various bank accounts of the Member's firm. The LSA alleged that the Member breached his first and third undertaking. The Member admits breaching the fourth undertaking.

Undertaking Number 1

[54] Undertaking Number 1 was signed on November 19, 2008. There was a mistake made in the drafting of this undertaking in that all firm's accounts were meant to be listed. The Member had cheques issued from the account not listed in the undertaking. The LSA contends that the Member issued cheques in breach of "the intention of" the undertaking.

[55] During the month that the Member was subject to Undertaking 1, the Member issued 13 cheques totaling $1,312,632.47 from a Trust Bank Account not listed on the undertaking. The LSA argued that his doing so was in breach of the "spirit" of the undertaking because the Member "knew that the undertaking was to cover all of his existing accounts".

[56] There is simply no evidence to support this argument.

[57] In our view, undertakings drafted by the LSA should be clear and unequivocal. In this case, the Member revived a dormant trust account. The undertaking did not refer to that account. As such, there was no breach of undertaking 1. This allegation is dismissed.

Undertaking Number 2

[58] There is no allegation of a breach of Undertaking Number 2. This charge is dismissed.

Undertaking Number 3

[59] Undertaking Number 3 was given on March 19, 2010. The Member testified that he had a meeting with Glen Arnston and was provided with an exception for 4 or 5 specific matters. The Members evidence is buttressed by a letter from Glen Arnston dated March 31, 2010 **(Exhibit 22)**. The letter speaks of a recent meeting and telephone

conversation. It states in part that the Member has "… agreed to sign the attached undertaking no later than Thursday April 1, 2010 with the caveat that some payments might still be made. …"

[60] The LSA argued that it made no sense for Mr. Arnston to sign (Undertaking Number 3) without indicating exceptions.

[61] The Panel is satisfied that it is more probable than not that the Member was provided with an exception or exceptions. Undertaking Number 4 was signed shortly after Undertaking Number 3 was signed. There was an extensive meeting on March 19, 2010 between the Member and Mr. Arnston. The Member's evidence is reasonable and consistent with the surrounding facts and preferred by the Panel. This charge is dismissed.

[62] The Panel finds there was not a breach of Undertaking 3. The allegation is dismissed.

Undertaking Number 4

[63] Undertaking Number 4 was given on April 1, 2010. The Member continued to use restricted accounts for the business of his law practice in breach of the undertaking until a custodian was appointed for the Member's practice on September 13, 2010.

[64] The Member admitted breaching Undertaking Number 4 and gave no good reason for doing so. This breach took place over an extended period of time, multiple breaches existed and exhibited a complete disregard for the undertaking given. As such, the Panel finds the Member guilty of this Citation which is conduct deserving of sanction.

[65] In summary, the Member is not guilty of breaching Undertakings 1, 2, and 3 but is guilty of breaching Undertaking 4. Breach of Undertaking 4 is proven and is conduct deserving of sanction.

Citation 5: Deceiving the LSA

Preparing a false Statement of Account

[66] On June 25, 2010 the Member presented Loreen Austin, an investigator with the LSA, with a Statement of Account for one of the files of Parm Johal. That Statement of Account was dated April 22, 2010 and it was presented in support of a $10,000 unidentified deposit made on May 21, 2010 to the law firm's General Account (the I. file). On November 5, 2010 Parm Johal presented a Statement of Account to Loreen Austin relating to the same client for work done on April 22, 2010. The Statement of Account prepared by Parm Johal was for $8,000, an amount that had already been paid by the client through monies that the Member should have had in trust (a $5,000 retainer and an allocation to the fee billing of $3,000 against H.I.'s $20,000 settlement money.)

[67] When the $10,000 account was presented to Parm Johal at the Hearing, she testified that she had not seen the Statement of Account before. It appeared Ms. Johal

was genuinely confused when she was examining the impugned Statement of Account. The Panel is convinced that Ms. Johal had not seen the Statement of Account before it was presented to her by counsel for the LSA and that she is not the author of the impugned document.

[68] The LSA alleges that either the Member or the Member's office manager, at the Members direction, created the Statement of Account at the time it was requested or at the time the deposit was made in May 2010.

[69] The Member's evidence is that he made an inquiry of his office manager to find support for the deposit in the amount of $10,000. He received the Invoice from his office manager and then gave the Invoice to Loreen Austin. The Member testified that he had no dealings with H.I. He testified, unequivocally, that he did not prepare the Statement of Account and he believed it was genuine when it was given to Loreen Austin.

[70] Notwithstanding Parm Johal's testimony, the Panel has determined that, on a balance of probabilities, there is insufficient evidence to find the Member guilty of attempting to deceive Ms. Austin by preparing a false Statement of Account. There is, no doubt, a suspicion. The suspicion may be reasonable. Suspicion, however, is not enough to convict the Member of attempting to deceive the LSA. Citation 5 is dismissed.

Preparing false trust bank reconciliations

[71] The LSA alleged that the Member falsified the October 2008 bank reconciliation **(Exhibit 10)** and presented it to the LSA Auditor, Richard Taylor, on December 16, 2008 so that he could be released from his Undertaking Number 1 in relation to his trust account. The Member was asked to sign Undertaking Number 1 by the LSA as the result of a Rule 130 audit and the Member's inability to reconcile his trust account. The note from LSA Auditor dated December 16, 2008 states that the "reconciliation for September" was "not completed" and that October and November were out of balance **(Exhibit 9B)**.

[72] The Member agrees that the bank reconciliation was incorrect. The trust bank account has never been reconciled. Many attempts were made by the Member to reconcile the account. Similar attempts were made at a later date by the custodian of the Member's practice.

[73] The Member testified that at the material time some of his accounting was being completed on a manual basis and some of his accounting was being completed on PC Law. He testified that he was in the process of transferring from a manual accounting system to an electronic one. There were mistakes and some missing records.

[74] The Member's version of events is preferred. The Member's trust account was in an irreconcilable state. It is certain that the Member was trying to give the LSA what it wanted. Attempts were made by the Member in this regard to satisfy the LSA auditors. Missing records and mistakes, alone, do not amount to an attempt to deceive. We find that the evidence by the LSA falls short of demonstrating an intention to deceive and to

falsify records. As such, the allegation that the Member prepared false trust bank reconciliations is dismissed.

Citation 6: Failure to co-operate with the custodian

[75] On September 7, 2010, in lieu of an interim suspension, the Benchers imposed a number of conditions on the Member's practice:

(a) that a custodian be appointed for the Member's practice on consent; and
(b) that the Member provide an undertaking to co-operate fully with the custodian **(Exhibit 76 page 3 lines 4 through 8)**.

[76] On September 13, 2010, a Consent Order was granted by Justice T. D. Clackson for the custodianship. Paul McLaughlin was appointed custodian to have "custody of the property and business of the practice of law of" the Member **(Exhibit 77)**.

[77] The custodian testified that his immediate concern after his appointment was to have the Member's bank accounts frozen. When he first attended at the Member's office, the Member was absent. He was greeted by the office manager. The Member appeared shortly thereafter and the custodian secured physical control of the keys to the Member's office. Notices were posted that the office was under the care of the custodian. Passwords to access digital records were obtained. Digital records were cloned. Files were indexed, boxed and moved to the custodian's office. There were meetings between the Custodian, the Member and other key individuals in the Member's office. The custodian advised that he had begun to "try and figure things out" including a trust reconstruction.

[78] The custodian's information was that Parm Johal was not implicated with the Member. It was the custodian's understanding that she was completing some family law files on a fee split basis. She appeared competent to the custodian. As such she was advised that she was the custodian's bailee regarding the files on which she was working (the J Files). This arrangement remained until Parm Johal received a direction from her client to take the files. The custodian testified that he did not review the J Files. He did not follow up on trust balances.

[79] Parm Johal testified that, after she spoke to the custodian, she prepared a chart showing retainers she had received and funds that should have been in the Member's trust accounts for each client. She testified that the Member admitted to her that he had removed the chart as well as retainer agreements for her clients. In addition she testified that the Member asked her to assist him in hiding trust funds from the custodian. The Member denies this conversation ever occurred and instead testified that the essence of his conversation with Parm Johal was simply one during which she demanded payment for the work completed by her.

[80] The custodian testified that even though accounts were reconstructed the trust accounts were impossible to reconcile. Under cross examination he testified that, notwithstanding that the accounts were irreconcilable, the accounts were solvent. There were sufficient funds to cover trust claims.

[81] It is not possible for the Panel to reconcile the version of events given in evidence by Parm Johal with the evidence of the custodian and the Member. There was no testimony from the custodian that the Member had not co-operated with him. In fact, there is evidence to the contrary. This includes custodian's description of meetings with the Member and how the custodianship progressed. There was no evidence from the custodian that the Member failed to co-operate with him. As well, the Member denied under oath, Parm Johal's recollection of their encounter.

[82] The Panel prefers the evidence of the Member and custodian and find there is insufficient evidence to find the Member guilty of Citation 6. Citation 6 is dismissed.

Citation 7: Failure to be candid with another member

[83] The LSA urges the Panel to find that the Member failed to be candid with Parm Johal about the security of her client's trust money and about his dealings with the LSA. When questioned by the LSA whether the Member ever talked to her about the LSA, Parm Johal testified that she was advised in the spring of 2009 by the Member that his trust accounts were not reconciling. She was also advised that the LSA had frozen the Member's accounts. She testified that the Member told her that this was a "minor issue".

[84] Parm Johal also testified that she read the LSA bulletin entitled "Notices to the Profession - Conditions - Imposition of Interim Conditions - Ajay Juneja" in September 2010. When she questioned the Member about the Notice, he reassured her by saying "don't worry, it will all be settled."

[85] It is likely the Member downplayed the seriousness of the LSA investigation, but that falls short of lack of candour deserving of sanction. Without more, this is insufficient to find the Member's conduct deserving of sanction. Citation 7 is dismissed.

Citation 8: Failing to maintain adequate funds in trust accounts to meet trust obligations; and Citation 9: Breach of Undertaking

[86] By letter dated August 21, 2008, the Member gave an undertaking to Chau M. Nguyen, Barrister and Solicitor as follows:

> "I therefore undertake to hold back the amount of $20,504.00 from your client's 2nd Draw in my trust account until such time as I receive notice of a settlement respecting the within Builder's Liens." **(Exhibit 28)**

[87] The amount consisted of two holdbacks. One of the holdbacks was for the sum of $5,264.60 on the C. Ltd. file and there was a further holdback of $15,239.40 on the A. Ltd. file.

[88] The client trust ledger card shows that the said sum of $15,239.40 was retained in the Member's trust account on August 22, 2008. Subsequently, these funds do not appear in the Member's September 2008 trust reconciliation **(Exhibit 31)**.

[89] The client trust ledger card shows a credit of $183,189.48 on April 2, 2009. Two debits are reflected in the ledger on April 2, 2009 of $3,500.00 and $179,689.48 leaving a balance of $15,239.40 as at April 2, 2009 **(Exhibit 30).**

[90] The Member's trust bank statement for the period April 2, 2009 to May 1, 2009 show the payment of $3500.00 clearing the bank account on April 6, 2009 and the payment of $179,689.48 clearing the bank account on May 1, 2009 leaving a balance in the trust account of $507.07 **(Exhibit 33, Tab 1)**, far less than $15,239.40 that the Member had given an undertaking to maintain. Through this series of transactions the Member not only failed in his undertaking to Mr. Nguyen but he also failed to maintain adequate funds in trust accounts to meet his trust obligations.

[91] When confronted with this information by Loreen Austin, the Member admitted to the breach. Citation 8 is proven and is conduct deserving of sanction.

Citation 10 Breach of Court Order

[92] On January 11, 2005 an Order was granted by Master L.A. Smart in Queen's Bench Action No. XXXX-XXXXX which ordered, among other things, that:

> "The Applicants shall be entitled to deposit into trust with Snyder & Associates, the amount of $11,500.00, (the "Funds"), which amount represents the full amount of the value of the Builder's Lien registered by the Respondent …
>
> The Funds shall be deposited and held in an interest-bearing solicitor's trust account pending agreement between the Applicants and the Respondent, or a further Order of this Court …" **(Exhibit 37)**

[93] The Member, as counsel for the Applicants, consented to the Order. Subsequently, these funds were transferred to the Member's trust account upon the request of the Member by a letter dated July 13, 2006 and pursuant to a further Order of Master L.A. Smart dated June 7, 2006 which ordered, among other things that:

> "The funds … will be transferred to Juneja & Company in trust to be held in an interest bearing solicitor's trust account in accordance with the Consent Order in the within action filed January 11, 2005." **(Exhibit 38)**

[94] The Member, in his correspondence to the opposing firm, confirms that the funds are being held pursuant to Court Orders **(Exhibit 38)**.

[95] A client trust ledger card shows that the funds were deposited into the Member's trust account to the credit of his client on July 24, 2006. The same ledger card indicates a transfer of the funds to File XXXX-XXX on January 21, 2007 **(Exhibit 40)**.

[96] The funds were not deposited into an interest-bearing solicitor's trust account. The funds were paid to the Member's general account on August 1, 2006 in contravention of the Court Order **(Exhibit 38)**.

[97] Queen's Bench Action No. XXXX-XXXXX was eventually resolved by Discontinuance of Action dated November 30, 2009 and a Mutual Release at which time the release of the funds was authorized **(Exhibit 47)**.

[98] Clearly, the Member breached the Court Orders of L.A. Smart in Queen's Bench Action No. XXXX-XXXXX dated January 11, 2005 and June 7, 2006 by not depositing the subject funds into an interest-bearing solicitor's trust account and by paying out those funds without agreement between the Applicants and the Respondent or on a further Order of the Court.

[99] Citation 10 is proven and is conduct deserving of sanction.

Citations 11–14: Commissioning and filing an affidavit knowing it to be false, preparing a false document, and failing to be candid with the LSA in denying the document was prepared by him.

[100] The Member was cited as forging a document (the Invoice) (**Exhibit 83)**, which was then attached to the Affidavit of his client, A.C.; commissioned by the Member and filed with the Court.

[101] The issue before this Panel is whether the Invoice is a forgery and if it is, is the author of the forgery the Member? If the Invoice is a forgery, then the Member is guilty of Citations 11–14.

[102] Two experts in handwriting gave evidence. The LSA called as its expert, Leslie L. Peace (Mr. Peace), while the Member called Kenneth J. Davies (Mr. Davies).

[103] Counsel for the LSA challenged Mr. Davies' qualifications, putting to him Exhibit 105 being an Internet document from the Scientific Working Group for Forensic Document Examination (the Group). Mr. Davies is not familiar with the Group. Unlike Mr. Peace, Mr. Davies was not trained in the RCMP laboratory which Mr. Davies testified is really the only institution in Canada which has available to a candidate the type of training received by Mr. Peace. Mr. Peace has over 30 years' experience in the area. Mr. Peace's experience and expertise comes from working for the Ontario Government in the Ministry of Revenue and working in the insurance industry. He did write a qualifying examination in Chicago.

[104] Both Mr. Peace and Mr. Davies were qualified, by the Panel, to give expert opinions, *inter alia,* in the comparison of handwriting.

[105] Mr. Peace had performed an analysis of the handwriting on the Invoice. He compared other handwriting with that on the Invoice. Mr. Peace is of the opinion that the Member prepared the Invoice.

[106] One of the problems is that the Invoice, which the LSA cited the Member as having forged, is not an original. The original was never provided to Mr. Peace and it was assumed the original to the Affidavit was on the Court file. During the course of the Hearing, the Clerk of the Court in Edmonton was contacted by the LSA asking if the

original was on the Court House record. By letter dated February 14, 2013, **(Exhibit 99)** Ms. S., Administrator, Court of Queen's Bench Civil, Edmonton, advised that the Invoice attached as Exhibit "B" to the Affidavit of A.C. was a photocopy. Therefore, the best document Messrs Peace and Davies had available to them was a photocopy of the Invoice.

[107] Mr. Peace's forensic examination report dated August 30, 2012 was entered as Exhibit 97. Throughout his report, he references the Invoice as the "questioned exhibit". In addition to reviewing the Invoice, Mr. Peace also reviewed what he calls sample documents for comparison being handwriting samples of the Member, the Member's conveyancing assistant, B.A., and the Member's office manager, A.P.

[108] Mr. Peace stated his purpose was to determine if the handwriting notations on the Invoice were written by the person who produced the specimen writing and signatures purported to be that of the Member. His other purpose was to determine if the handwritten notations on the Invoice were written by either B.A. or A.P.

[109] Mr. Peace, in his report, extensively details the methodology he employed in his analysis. Mr. Peace concluded that the questioned handwritten, hand printed numerical notations on the Invoice were written by the Member, not by Ms. A. or Mr. P. In support of his conclusion, Mr. Peace prepared a comparison chart comparing some of the Members writing with that of the writing on the Invoice.

[110] Mr. Peace remarks in his report that there were several overwritten and obliterated notations on the Invoice which he excluded from his analysis because the writing motions in these notations cannot be clearly interpreted from the photocopy.

[111] Mr. Davies' report dated January 31, 2013 was entered as Exhibit 93.

[112] Mr. Davies did not perform an analysis of the Invoice or do any comparative studies. His opinion was confined to rebutting the opinion of Mr. Peace.

[113] Mr. Davies, like Mr. Peace in cross-examination, testified that it is always best to have an original document, rather than a photocopy, to review. Mr. Davies testified that the more often a document is photocopied the less reliable it is. In addition, the Invoice appeared, to Mr. Davies, as having many of the characters overwritten, to some extent, in each section of the Invoice. In addition to this, the Invoice is of such a quality that it does not disclose pressure or stroke sequence characteristics of the writer.

[114] While Mr. Davies took no exception with the methodology employed by Mr. Peace, he pointed out that the methodology for the nature and limitations of the documents examined by Mr. Peace were not fully acknowledged or addressed in Mr. Peace's report. These limitations were the absence of the original Invoice; the apparent over-writing and obscuration of much of the questioned writing; and the failure of the Invoice to substantively and reliably disclose any pressure characteristics or to disclose stroke sequence in the writing which are two handwriting characteristics that are often fundamental in determining authorship of handwriting with any degree of confidence.

Mr. Davies is critical of Mr. Peace for largely ignoring the limitation imposed by the over-writing and obscuration/obliteration of the handwriting in the Invoice.

[115] Mr. Davies gave an example of how significant differences in handwriting were discounted by Mr. Peace referencing the writing of the word "Edmonton". In Mr. Peace's chart, (Exhibit 97) the two instances given by Mr. Peace on the right show a distinct consistent comparison of letters, as "E d monton" whereas the sample from the Invoice shows a distinctly more compressed form of the word. Mr. Davies notes that although an opinion can often be rendered, handwriting habit cannot be definitively determined from over-written and obliterated handwriting as seen on the Invoice, but "may" be determined from examination of the original of that document. Mr. Davies testified that Mr. Peace failed to make adequate note and allowance for these limitations in offering a definitive result as to relative authorship of the Invoice. Mr. Davies' final comment is that he finds that the definitively stated conclusions/opinions set out in Mr. Peace's report in identifying relative authorship of the Invoice are imprudent, exceeding that which can be properly supported by the limited nature of the Invoice.

Case Law

[116] Throughout the Hearing, LSA counsel repeatedly cautioned the Panel that there is only one civil standard approved in common law and that is proof on the balance of probabilities. In support, LSA counsel referenced F.H. v. McDougall, [2008] 3. S.C.R. 41 where, at paragraph 40, the Supreme Court of Canada states:

> Of course, context is all important and the judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. …

[117] In closing, counsel for the Member referred the panel to a number of authorities. Of interest are the comments which appear in the text, *Practice and Procedure before Administrative Tribunals* written post McDougall. At pages 17-19 the authors state that the Courts prefer to speak of cogency of the evidence required to prove a fact, rather than the certainty with which the fact has to be proven (the standard of proof still being on the balance of probabilities). The authors go on to state that:

> … while insisting that there is only one standard of proof in civil proceedings which does not fluctuate regardless of the seriousness of the matter, the Courts also insist ***that the more serious the matter, the more cogent the evidence must be – that is to say, the better the quality of the evidence must be.*** The premise that the panel must be convinced by clear and cogent evidence that the conduct forming the subject matter of the citations has been committed was reiterated by the discipline hearing panel in the case of the Law Society of British Columbia v. Burton, [2001] L.S.D.D. No. 35. (Emphasis added)

[118] In the case before us, if the Member was found to have committed the acts alleged in Citations 11 through 14, the consequences would be very serious for him as he would be found not only to have created a forgery and attached it to an Affidavit he commissioned; filed a false Affidavit; lied to the LSA, and by extension in denying that he created the Invoice, he also lied, under oath, to the Panel.

[119] During his evidence the Member vehemently denied creating the Invoice and uncategorically denied the allegations in Citations of 11 through 14. Under vigorous cross examination, the Member held his ground. The demeanor of the Member was consistent throughout his evidence, in direct and in cross examination. He presented, to the Panel, as a forthright and honest person.

[120] The Panel considered and weighed the evidence before it. In arriving at its decision to dismiss Citations 11 through 14, the Panel considered the following:

(a) Loreen Austin, Forensic CA for the LSA, testified that during the LSA investigation she met with Mr. H., the purported author of the Invoice. In hearsay evidence from Loreen Austin, the Panel heard that Mr. H. told her that some of the writing was his. Which portion of the writing is attributable to him as the author is unclear.

(b) Exhibit 85, being a LSA document created for the purpose of Loreen Austin's meeting with Mr. H., was signed by Mr. H. on July 21, 2011 but not witnessed. For ease of reference, the entire document is produced below:

> "I have reviewed the attached Invoice #544551, allegedly prepared by T.C. Ltd. for services provided to E.H. on July 15, 2006.
>
> I have signed and dated the document that I have reviewed to verify that it is the Invoice referred to in this confirmation.
>
> **Based on my review, I confirm that:**
>
> _____ the Invoice was definitely produced by T.C. in 2006;
>
> **_X__ the Invoice may have been produced by T.C. in 2006;**
>
> 1. the form and type of Invoice is consistent with that used and produced by T.C. in 2006;
>
> 2. the details of this Invoice for T.C., are correct (Mr. H. crossed out the words "the address and GST number" and initialed the deletions);

3. the handwriting looks consistent with the handwriting of an individual representing T.C. that may have produced this Invoice in 2006.

_____ the Invoice was definitely ***NOT*** produced by T.C. in 2006." (Emphasis added) **(Exhibit 83)**

[121] Having chosen the second of two possibilities put forward to him by LSA personnel in Exhibit 85, it is clear that Mr. H. could not state that the Invoice was definitely produced or not produced by T.C. in 2006.

[122] Certainly, there is no question that the address and the GST number found on the Invoice in Exhibit 83 is incorrect according to Mr. H., but that does not overcome Mr. H.'s other "evidence".

[123] Mr. H. worked for T.C. at the material time. Apparently there was a delivery of sand and the sand was spread at the subject property during the course of its construction. Exhibit C to the Affidavit shows that the Invoice dated July 15, 2006 was paid on July 18, 2006 for the delivery and spreading of the sand.

[124] Mr. H. was served, by the LSA, with a Notice to Appear at the Hearing but did not appear. LSA staff followed up with Mr. H.; he did not attend. Therefore, the panel was denied the opportunity to hear from Mr. H. as to what role he played in the creation of the Invoice and other collateral issues that one would expect to be within his knowledge. The Member was also denied the opportunity to cross-examine Mr. H..

[125] The Member testified that the Affidavit to which the Invoice is attached as Exhibit B was typed by him. The LSA made much of the fact that on the Invoice the name of the company is mis-spelled, appearing as "T." while the proper spelling of the company name is "T.". The inference was that the Member did not know how to spell the name of T.C. Ltd. when he created Exhibit B. However, given that the Member typed the Affidavit himself where the word "T." appears twice and is correctly spelled, the Panel has determined that argument fails.

[126] Both handwriting experts testified that it is always best to have an original to analyze. In this case, both experts testified that the analyst is handicapped when dealing with a photocopy of a document. The more often a document is photocopied, the more of its integrity is lost. Therefore, making a determination on whether or not it is a forgery becomes more challenging.

[127] The Panel accepts the evidence of the experts that it is always best to have an original to analyze and an original was not available to them in this instance. It is also significant to the Panel that Mr. H. confirmed that the Invoice may have been produced by T.C. in 2006. It is also significant to the Panel that Mr. H. did not appear to give evidence at the Hearing. Thus, the Panel is left with the evidence of Loreen Austin of what Mr. H. told her as well as Exhibit 85 prepared for the purpose of her meeting with Mr. H. The Member denies creating the Invoice.

[128] The LSA has not provided cogent evidence sufficient to prove, on a balance of probabilities, that:

(a) the Member created the Invoice, resulting in his commissioning and filing a false affidavit; and

(b) the Member lied to the LSA in stating he did not prepare the Invoice.

[129] Given the totality of the evidence, the Panel finds that, on a balance of probabilities, the Member did not create the Invoice. As such, Citations 11 through 14 are dismissed.

[130] The matter of sanctioning was put over to allow for the delivery of these reasons.

Dated this 12th day of June, 2013.

_____ _____

Anthony G. Young, Q.C. (Chair) Rose M. Carter, Q.C. (Bencher)

_____

Derek Van Tassell (Bencher)