THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE LEGAL PROFESSION ACT, R.S.A. 2000, C. L-8 AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF AYYMAN HAMMOUD A MEMBER OF THE LAW SOCIETY OF ALBERTA (the "LSA")

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Panel:

Sarah King-D'Souza, Q.C. – Chair
Anne Kirker, Q.C. – Committee Member
Wayne Jacques, CA – Committee Member

Counsel Appearances:

Tracy Davis – For the LSA

Hearing Date: April 23 – 27, 2012 and April 30, 2012

Hearing Location: 500, 919 11th Avenue SW, Calgary, AB

HEARING REPORT

I. INTRODUCTION

The Member is a student at law enrolled as a Member of the LSA. The Member completed his twelve months of articles with some difficulty. He has been suspended from CPLED since March 31, 2010 and thus is unable to repeat a module he failed in 2010. He currently occupies an occupational "no man's land" wherein he is working in a supervised arrangement with a lawyer in Calgary, Alberta but cannot be admitted to the Alberta Bar because he has not completed his CPLED requirements. During his time as a student at law the Member has been investigated by the LSA and four citations are the subject of this hearing. The citations relate to the Member's conduct, his candour, and compliance with the Rules of the Law Society that require disclosure of criminal charges.

A timeline of events as they are relevant to this hearing is set out as follows:

Timeline
Member's Education

1999 and 2000	Member attended Law School at University of Alberta, for years 1 and 2.
September, 2001:	Member attended University of Calgary Law School for year 3.
January 14, 2002:	Member expelled from University of Calgary for non-Academic misconduct for an assault upon Professor A. P. (Dr. P.).
March 4, 2003:	Criminal Charge in relation to assault upon Dr. A. P. waived to Edmonton for guilty plea. Member, through counsel, pled guilty to and was convicted of an assault.
April 25, 2003	Member sentenced following a presentence report. Received 14 months' probation and 100 hours community service;
December 2, 2004	Breach of probation. Member received twelve additional months' probation for not completing his community service hours and for failing to attend an appointment with his probation officer.
September, 2004:	Member charged with several alleged assaults on Peace Officers. Charges withdrawn March 2006.
2005:	Member completed Law School at University of Alberta.

Member's Articling Career

2006:	[L], Principal [DS]. The Member was there for ten and half months.
January 15, 2009 - March 27, 2009:	Member articled with Mr. [JI]; an incident with Mr. [JI] ended the position.

August, 2009:	Member commenced CPLED Program.
November 4, 2009:	CPLED incident with Ms. [PG].
February 19, 2010:	CPLED Incident with Ms. [CS].
March 18, 2010:	Email to [PW] at CPLED.
March 31, 2010:	Member suspended from CPLED.
March, 2010:	Member applies for articles with [SR], LSA. Membership counsel suggests a different supervising lawyer be found.
March, 2010:	[NB] Undertakes to supervise Member.
June 2010:	[NB] withdraws his application to supervise Member.
December 2010-present date:	Member in a supervised clerkship at offices of [TD].

Personal events experienced by Member

November 1, 2009:	Incident with parents and sister, Member charged with assault (two charges) and uttering threats (five charges).
January 17, 2010:	Member charged with trafficking and obstructing Police Officer.

II. Citations

The Member faced the following citations:

1. IT IS ALLEGED that the student conducted himself on a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction;

2. IT IS ALLEGED that the student failed to be candid with the Law Society and that such conduct is conduct deserving of sanction;

3. IT IS ALLEGED that the student failed to be candid with another lawyer and that such conduct is conduct deserving of sanction;

4. IT IS ALLEGED that the student failed to comply with the Rules of the Law Society and that such conduct is conduct deserving of sanction;

III. STANDARD OF PROOF

The Standard of Proof required in LSA y proceedings is the civil standard which is proof on a balance of probabilities. F.H. v. McDougall (2008) S.C.C. 53 paragraph 49.

The Alberta Court of Appeal in its 2011 ruling Moll v College of Alberta Psychologists 2011 ABCA 110, [2011] AJ No 368, at paragraph 22 cited F.H. v. McDougall to establish that the burden of proof in professional disciplinary proceedings is on a balance of probabilities, stating as follows:

"First, what is not in issue is the burden of proof. Moll's factum suggests that findings of professional misconduct can only be made on the basis of evidence that is "clear, convincing and cogent", the implication being that this is the standard to be met. But the law is now clear that there is only one civil standard of proof at common law. That is proof on a balance of probabilities."

IV. HEARING

The Panel was advised that the LSA was seeking the termination of the student's registration.

1. Representation:

The Panel was advised that on December 15, 2011, at a Pre-Hearing Conference, the Chair of Conduct asked the Student to review the pro-bono lawyer list and on February 8, 2012, the Chair of Conduct had again encouraged the Member to speak with the two lawyers at his offices. On May 8, 2012, the Chair of Conduct again reminded the Member to look for counsel and that the Hearing would proceed in any event.

The Member represented himself throughout the proceedings. He indicated that he was prepared to proceed without counsel having been unable to find counsel to act on his behalf. The Panel was advised that the Member is under an approved working arrangement with [TD], Barrister and Solicitor, in Calgary, Alberta, and that Mr. [TD] was aware of the proceedings.

2. Jurisdictional Documents:

On April 23, 2012 Counsel for the LSA established jurisdiction and jurisdictional Exhibits 1-5 were entered.

Section 49(4) of the Legal Professions Act gives the Hearing Committee Jurisdiction over the Student.

The Member had no objections to jurisdiction having been established by way of entry of Exhibits 1-5. Neither the LSA nor the Member objected to the composition of the Panel. The Panel was provided the Exhibit Binder in advance of the Hearing by agreement between Counsel for the LSA and the Member.

Neither Counsel for the LSA nor the Member objected to the matter proceeding in public.

3. EXHIBITS

At the Hearing the Member advised that Exhibit 31 was not supposed to be in the Binder. It was the Member's understanding that information related to an incident at the University of Calgary in 2002 was not to have been included in the Exhibit Binder subject to an application to be heard on April […], 2012. It was to be his application to exclude such materials on the basis of breach of solicitor-client privilege.

Exhibit 31 was removed from the Exhibit Binder by consent of LSA Counsel. The Member was informed that the Hearing Committee had already read Exhibit 31 because it had been provided by way of agreement of the Member and Counsel for the LSA in advance of the Hearing.

It was drawn to the Member's attention by the Hearing Committee that there were other Exhibits remaining in the Exhibit Book that either directly or tangentially referred to the incident of 2002 that apparently he had consented to.

The Member conceded that he had been at the Pre-Hearing Conference and may have consented to the entry of those Exhibits without knowing what he consented to. A copy of the Preconference Hearing Memorandum showed that the Member had consented to all but Exhibits 26, 27, 29 and 30 being provided to the Hearing Committee in advance.

After a short break, Counsel for the LSA and the Member advised the Hearing Committee that they wished to argue the issue of solicitor/client privilege the following day, as well as address the calling of a particular witness at the Hearing.

The Hearing Committee directed that the Hearing proceed and the Hearing Committee would await hearing from both Counsel and the Member on the issues the following day.

By the end of the Hearing, Exhibits numbered 1- 25, 28, and 32-57 had been entered either by consent or otherwise during the course of the Hearing.

V. Witnesses:

The dates on which and names of witnesses called during the hearing were as follows:

April 23, 2012	*[AG]*	*Transcript pages 38-60*
April 23, 2012	*[NB]*	*Transcript pages 64-85*
April 23, 2012	*[CS] (by telephone)*	*Transcript pages 99-109*
April 23, 2012	*[PG] (by telephone)*	*Transcript pages 114-132*
April 24, 2012	*[JI]*	*Transcript pages 114-185*
April 24, 2012	*[PW] (by telephone)*	*Transcript pages 189-224*
April 24, 2012	*[JH]*	*Transcript pages 228-252*

April 25, 2012	*[TM]*	*Transcript pages 408-433*
April 26, 2012	*A. P.*	*Transcript pages 515-518*
April 26, 2012	*S.D.*	*Transcript pages 525-539*
April 26, 2012	[TD]	Transcript pages 554-588
April 26, 2012	Ayyman Hammoud	Transcript pages 594-668

DECISION AND REASONS:

Citation 1

1. IT IS ALLEGED that the student conducted himself in a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction;

Issues:

a. Did the Student conduct himself in a manner that brought discredit to the profession in relation to his interactions with CPLED staff on two occasions?

b. Did the Student conduct himself in a manner that brought discredit to the profession in relation to his interactions with Calgary Police Services on two occasions?

c. Is that conduct, conduct deserving of Sanction?

Applicable Law:

Section 49 (1) of the Legal Profession Act sets out the general test for the Hearing Committee to consider in relation to all citations in this hearing as follows:

"49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
(a) is incompatible with the best interests of the public or of the members of the Society, or
(b) tends to harm the standing of the legal profession generally, is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta."

Section 3(a) of the Interpretation section of the Law Society of Alberta Code of Professional Conduct as it then was, provides that in assessing conduct under the Legal Profession Act, the Law Society has broad powers to declare conduct to be deserving of sanction. The Law Society's primary concern is conduct that reflects poorly on the profession or that calls into question the suitability of an individual to practice law. Disciplinary assessment of conduct is to be based on all facts and circumstances as they existed at the time of the conduct. A trivial or technical breach of this Code without significant consequences is unlikely to be sanctioned. A lawyer's intentions and the willfulness of conduct are also relevant.

Section 3(c) of the Interpretation section of the Law Society of Alberta Code of Professional Conduct as it then was, provides that although the word "knowingly" does not generally appear in the rules, a lawyer's intentions and the willfulness or deliberateness of his or her conduct are relevant to whether a breach will be sanctioned. If a lawyer did not know, and could not reasonably be expected to have known, one or more factual elements of an ethical violation, any disciplinary assessment of the conduct will take this circumstance into account.

Section 4 of the Interpretation section of the Law Society of Alberta Code of Professional Conduct as it then was, states as follows:

"4. Definitions in this Code:

(c) ***"belief"****, when used in relation to a lawyer, means that the lawyer actually believed or ought to have believed the fact in question;*

(n) ***"lawyer"****, means an active member of the Law Society, an inactive member of the Law Society, a suspended member of the Law Society, a student-at-law and a lawyer entitled to practice law in another jurisdiction who is entitled to practice law in Alberta. A reference to "lawyer" includes the lawyer's firm and each firm member except where expressly stated otherwise or excluded by the context;*

(s) ***"student-at-law"****, means a person admitted to the Law Society as a student-at-law."*

Chapter 1 of the LSA Code of Professional Conduct as it then was, Relationship of the Lawyer to Society and the Justice System, Rule 1, requires that a lawyer must respect and uphold the law in personal conduct and in rendering advice and assistance to others.

The commentary to Chapter 1, Rule 1, states as follows:

"C.1 Due to the connection of Lawyers with the administration of Justice and the Public scrutiny to which their actions will be subjected, a breach of law committed by a Lawyer

had potentially serious implications. A Lawyer therefore has an ethical as well as a legal obligation to obey the Law.

"The Law" for the purposes of Rule #1 is to be broadly interpreted and includes common law, such as Tort Law in additional to Criminal and quasi-criminal statutes, however, not every breach of the law will be considered conduct deserving of sanction. The Law Society's primary concern is to protect the public and the integrity of the profession by ensuring that each member of the profession is an appropriate individual to practice law. All relevant circumstances of an offence will therefore be taken into account, including its nature and seriousness and the existence of pervious violations. Behavior that is notorious or public in nature of that has a dishonorable element (such as failure to pay a civil debt in the absence of a legitimate dispute or justification) is the kind of conduct that may evoke ethical sanction."

Chapter 1 of the Law Society of Alberta Code of Professional Conduct as it then was, Relationship of the Lawyer to Society and the Justice System, Rule 3, states that a lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration.

The commentary to Chapter 1, Rule 3, states as follows:

"C.3. Society expects that the legal profession will play a leading role in protecting the integrity of the justice system and ensuring that it functions properly. A lawyer's behavior is incompatible with this role if it encourages public disdain or disregard for the administration of justice. Examples are deliberate flouting of the law or other flagrant disrespect for an aspect of the justice system; irresponsible or unjustified allegations of corruption or partiality; criticism that is ill-consdered or malicious; disrupting judicial or administrative proceedings; and suggesting to a client or other person that evasion of the law is acceptable."

Chapter 3 of the LSA Code of Professional Conduct as it then was, Relationship to the Profession, Rule 1, states that a lawyer must refrain from personal or professional conduct that brings discredit to the profession.

The commentary to Chapter 3, Rule 1, states as follows:

"C. 1. Because of a lawyer's quasi-official position in society (see Chapter 1, Relationship of the Lawyer to society and the Justice System), the personal and professional behavior of a lawyer may attract more attention than that of a non-lawyer and may directly or indirectly influence the public's perception of the justice system and the profession. It follows that a lawyer has a responsibility to avoid even the appearance of impropriety, and to act in a manner that encourages the confidence, respect and trust of society.

Behavior considered to bring discredit to the profession would include incidents reflecting adversely on a lawyer's personal integrity (such as those involving fraud and dishonesty) as well as conduct that is demeaning to the profession or to the administration of justice generally (such as public abusiveness or offensiveness or counseling illegal acts). (see also the Legal Profession Act; Rule #1 and #3 of Chapter 1, Relationship of the Law to Society and the Justice System; and Rule #2 of Chapter 15, the Lawyer in Activities Other Than the Practice of Law)"

Positions:

The evidence presented by the LSA in relation to this Citation came from three separate incidents. The first was interactions with CPLED that caused the Member to be suspended from CPLED. The second incident was the November 1, 2009 incident that resulted in the Member being charged with criminal offences against family members. The third was an incident that occurred on January 17, 2010 that resulted in the Member being charged with 1) trafficking in cannabis, and 2) obstruct/omit to assist a public/peace officer.

It was the position of Counsel for the LSA that the Member had conducted himself in a manner that brought discredit to the profession in that he had used profanity with two CPLED employees, [PG] and [CS]. The Member's position in relation to Ms. [CS] was that he used profanity inadvertently twice only and excused himself. The Member denied using profanity with Ms. [PG].

It was also the position of Counsel for the LSA that the Member conducted himself in a manner that brought discredit to the profession due to his interactions with Calgary Police Services on November 1, 2009 and January 17, 2010.

The Member's position was that he had not conducted himself discreditably with Calgary Police Services on either occasion.

Evidence:

<u>CPLED INCIDENTS</u>

The Exhibits relating to the CPLED incidents are found at Exhibits 8-20, and Exhibit 21.

Evidence of [PG]

In November 2009 Ms. [PG] was working as associate director of the CPLED program with the Legal Education Society of Alberta. Her responsibilities entailed dealing with

the competency evaluations and modules. The other Associate Director at the time was [CS].

There is no such thing as an extension of either a module or an examination. If a student is unable to complete something the only option is a deferral, with an exception where a deadline could be changed in the circumstance where a student submitted a request for accommodation.

On November 4, 2009 the Member called Ms. [PG]. He had a competency evaluation due November 5. The Member said he was ill and was asking for an extension. Ms. [PG] explained that he would have to ask for a deferral. The Member became agitated and demanding with Ms. [PG]. The Member started yelling, and he used profanities. He then hung up on her. Ms. [PG] made notes of the conversation and took the notes and the file to the Director of CPLED. Mr. [PW] dealt with the matter.

In March 2010, Ms [PG]'s fellow Associate Director, [CS] came to speak with Ms. [PG] about how rudely she had been spoken to by a student, whom it transpired was the Member. As a result of Ms. [CS] advising Ms. [PG] of the Member's second bout of rudeness to a CPLED staff person, Ms. [PG] decided to complain to the LSA about her experience and wrote to the LSA on March 1, 2010.

When cross-examined by the Member, Ms. [PG] reiterated that at the end of their conversation Mr. Hammoud had used profanity and that she was certain he had hung up on her, although it was possible that there had been a technical problem.

Evidence of [CS]

In February 2010 Ms. [CS] was the Associate Director of Regulatory Affairs at the Legal Education Society of Alberta and her role revolved around administering the CPLED program in Alberta. Her supervisor in February 2010 in relation to CPLED issues was Mr. [PW].

On February 19, 2010, at 3:00 p.m. Ms. [CS] received a telephone call from the Member. He called to say that he was very surprised and shocked that he had received a "competency - not yet demonstrated" mark and he asked if it was an error. He was upset. Ms. [CS] indicated that she would check to make sure that the mark was correct. Ms. [CS] did her background checks and called the Member back to confirm that he indeed had received a "competency - not yet demonstrated". The Member was upset, angry, and started swearing. He used the word "fuck" a lot and Ms. [CS] was extremely shocked. The Member ranted using a constant flow of profane language that did not seem to be directed at Ms. [CS].

Ms. [CS] spoke to Ms. [PG] and then spoke to Mr. [PW]. She then chose to write a formal letter to the LSA. Ms. [CS] had reviewed the Member's response to the LSA with respect to her complaint, and she disagreed with him that he only swore a couple of times, stating it was more like 12 times. She did agree that she never felt that the profanities were directed to her. She disagreed that the conversation ended politely.

Evidence of [PW]

Mr. [PW] has been the Executive Director of the Legal Education Society of Alberta and Director of CPLED since January 1, 2008. He is the supervisor of both Ms. [PG] and Ms. [CS].

Ms. [PG] came to him to discuss an encounter she had had with the Member. Given the language used by the Member, Mr. [PW] was concerned that the behavior was inappropriate and unprofessional. Mr. [PW] called the Member and asked for an explanation. The Member explained he had not been feeling well, and he conceded he had used inappropriate language. There was a discussion as to whether or not the phone call had been inappropriately terminated. Mr. [PW] was prepared to treat it as an isolated incident.

On February 19, 2010, [CS] arrived at Mr. [PW]'s door quite distressed, and outlined a conversation she had had involving the Member where he had used profanity throughout the whole conversation directed at life in general and the program in general not specifically at Ms. [CS]. Mr. [PW] was told that the Member had used the word "fuck" at least a dozen times. Mr. [PW] suggested to Ms. [CS] that she seriously consider filing a complaint with the LSA. Students in CPLED enter into a program agreement which includes a professional integrity policy.

On March 18, 2010, Mr. [PW] received an email from the Member [Exhibit 16]. The email states (in part) as follows:

"Ms. [PG] and Ms. [CS] managed the re-grading process notwithstanding the apparent conflict of interest respecting the conduct matter (complaint to the Law Society) and the re-grading matter. I respectfully submit that these two matters ought not to have been handled by the same parties as they were in this case. There should have been separation. I am considering reporting this apparent conflict of interest to the Law Society; however, I am hopeful that this matter may be resolved without involving the Law Society. I have serious concerns about fairness and bias as they relate to the handling of the re-grading…"

"I am respectfully requesting that you please look into this matter and that my grade be changed from a CNYD to a CD, or alternatively, a re-grading whereby the process is handled by an independent party. Thank you for your consideration."

Mr. [PW] considered the suggestion that the Member's grade be changed or that the competency evaluation be sent out for further re-marking in exchange for not proceeding with the complaint to be offensive and inappropriate. He wrote a letter of complaint to the LSA.

Following writing the letters of complaint, Mr. [PW] and his staff discussed the situation further. All three of them had filed complaints with the LSA that were pending investigation. There were two incidents of behavior where the Member had become readily agitated and behaved inappropriately. It was Mr. [PW]'s decision that pending the outcome of the investigation of the complaints that the Member would be suspended from the program. The outcome of these proceedings will be part of any evaluation as to the ability of the Member to come back into the program.

The complaints directed to citation were those of Ms. [CS] and Ms. [PG]. Mr. [PW]'s complaint was not directed to citation by a Conduct Panel. Counsel for the LSA advised that Mr. [PW]'s evidence was provided for context and so that the Panel was aware that the Member had been suspended from CPLED program in part due to his email to Mr. [PW] but in part due to inappropriate contact with CPLED staff.

Evidence of Member at Hearing re CPLED incidents:

The Member confirmed that he had had a telephone conversation with Ms [PG] in November 2009. The Member said he was ill. He did not feel that Ms. [PG] was receptive to his concern, her tone was off and she seemed rushed. The Member denied using any profanities during his conversation with Ms. [PG]. The Member suggested that the reference in Ms. [PG]'s notes at Exhibit 15, to his use of profanity, had been inserted after the fact. The Member indicated that Ms. [PG] seemed to hang up on him. When Mr. [PW] called his primary inquiry was as to whether the Member had hung up on Ms. [PG], and there was no mention of profanities. With respect to the notes on the bottom of Exhibit 11, in Mr. [PW]'s hand writing: "He acknowledged use of strong language", the Member indicated that this was not use of profanity.

The Member agreed that there had been a telephone call between him and Ms. [CS] in February or March 2010. The Member was upset at failing the last CPLED assignment because it involved more financial hardship and would delay his Bar Call. The Member acknowledged using the word "fuck" a couple of times in the second call, but said that he had done so spontaneously not directing the language at Ms. [CS] specifically. The Member gave evidence that he had apologized to Ms. [CS].

Incident of November 1, 2009

Evidence of [JH]

Constable [JH] is an experienced Police Officer employed with the City of Calgary Police Services. On November 1, 2009, Constable [JH] received an urgent request to attend a home in Northeast Calgary. Upon arrival he encountered an elderly lady who was upset and spoke little English. He saw a coffee table was turned upside down and a telephone was broken. The woman indicated that she had had an argument with her son, Ayyman Hammoud. Mrs. Hammoud was distressed. Her husband, Mr. Hammoud Sr. was also upset visibly shaken, anxious and nervous. Both of the older Hammouds advised the police officer that they had been repeatedly pushed to the floor and both had received repeated threats of harm from their son. Mr. Hammoud Sr. had an abrasion on his elbow which allegedly came when he was pushed to the floor by his son.

Constable [JH] also attended at the home of the Member's sister who advised that the Member had threatened to come over there and kill her and her young children. The sister was visibly upset and apprehensive. The Constable's partner made a call to the Member by telephone. The Member was advised that the police were investigating the alleged domestic assault and needed to speak to him. The Member said to the police officers: *"I'm busy. I can't attend"* and put the phone down. When the police called back the phone rang and was not picked up. The Member never did come to speak to the police about the event. Due to urgency the police attended at the arrest processing unit to lay five charges of uttering threats and two charges of assault, and to ensure that a warrant was active on the system as they perceived the incident to be serious. Warrants were placed on the system before the Constables finished their shift that night. In addition the police applied for an Emergency Protection Order which was granted against the Member

Evidence of Member at the Hearing respecting the incident of November 1, 2009.

The Member's evidence was that he and his wife had been living at his parents' house. The Member's parents had issues with his wife and her parents due to a broken engagement between the Member's older brother and his wife's sister that created family issues. There were other family dynamics between the Member's wife and his parents. An argument had been commenced by the Member's mother with the Member's wife. The Member interceded between the two women. The Member's father arrived on the scene and took his wife's side. The Member stated as follows [Transcript page 642 lines 8- 13]:

"And on a few occasions I – I – you know, I kind of – I made contact with them. I won't deny that. I made physical contact, but it was more or less like, you know, like – like, just stay away. You know, enough, please. And it was – it was that. That was that."

The Member said he made reference during the argument to some negative events of his parents' past that really upset his parents. The Member and his wife were asked to leave, which they did voluntarily.

The Member received a call from a police officer after he and his wife had left the home demanding that the Member return so that the police officer could speak to him. The Member told the police officer that he was quite busy; he was trying to secure a place to live and was not interested in speaking to the police about what had happened with his parents earlier. The Member also received a telephone call from his sister berating him for raising past issues with their parents in front of his wife. They had words but the Member said he did not threaten his sister.

The Member's evidence was that his parents and family have been aware of his struggles since 2002 to make headway in his legal career and that they knew if they filed criminal charges it would damage him and prevent him from being called to the Bar and that this was their motivation in calling the police.

Evidence of S.D. respecting the incident of November 1, 2009.

Ms. D. is the Member's wife. Ms. D. confirmed that there was an argument on November 1, 2009, that occurred in the living room of the residence in which she, her husband and his parents all lived. The Member came up from downstairs and tried to separate his mother and wife. Her father in law was there as well. She and the Member decided to leave the house. She went downstairs to pick up her belongings and the Member went outside. With respect to physical contact between the Member and his parents, Ms. D. stated that the Member had tried to separate his mother and wife but had not struck, pushed or punched either of his parents.

Ms. D. indicated that the Member's sister had telephoned the Member after they had left the home upset that the Member had taken her side in the argument. Ms. D. did not remember whether her husband had been on the phone with the police or not, nor whether there was police involvement. She was aware that the case was dropped.

Incident of January 17, 2010

Evidence of [TM].

Constable [TM] is employed by Calgary Police Services as a Police Officer. On January 17, 2010, he was driving on 12th Avenue S.W. approaching McLeod Trail north bound. The Constable had his window rolled down a bit so he could hear and smell what was going on around him. He smelled a strong smell of fresh marijuana and observed a black Pontiac Grand Prix in front of him. He followed the vehicle, and as the smell was very strong, he conducted a traffic stop.

When he approached the driver's side window of the Grand Prix there was a very strong odor of fresh marijuana and recently sprayed cologne. The Constable had probable grounds to believe there were drugs in the vehicle and called for backup. Both occupants were informed that they were under arrest. Mr. F. was the driver and the Member was in the passenger seat. The Member was cuffed and searched and put into the back seat of the police vehicle. The vehicle search disclosed cologne in the right front passenger side door. The Officer did his Charter and caution with the Member.

The Constable read his notes of his reading of the Charter and caution to the Member as follows [Hearing Transcript page 418 lines 21 to page 419 line 6]:

"... When I asked him, "Do you understand?" his reply was, "Fuck you, you fat piece of shit.

Another comment, "I'm going to fucking sue you."

And as I continued to try and reach the Charter and caution, "Shut up."

And then when I got to the part, 'Do you want to call a free lawyer or any other lawyer?" "Shut the fuck up. I'm going to have your job."

Some other comments were made by the Member to the Officer as well such as: *"I'm being treated like a common criminal,"* and "*I'm an officer of the court."* [Hearing Transcript page 419 lines 3- 6.]

When the night sergeant arrived the Member demanded that he speak with him. The Member asked to be treated with more respect as he was an officer of the Court and that he was just in the vehicle for coffee with the driver. The Constable went on to state at page 420 of the Hearing Transcript, lines 2 to 8 as follows:

"Once the sergeant left, some of the other comments that were stated while I was in the front seat and Mr. Hammoud was in the back seat: "your sargeant is as fucking racist as you are." "You fucking racist pigs". And "I'm going to take away everything you own." And then again I was also called, "you fucking mutt" and again these comments were made after he spoke with the sargeant."

With respect to identification of the Member, the Constable's evidence was that he asked the Member for his name after he had been placed in the police vehicle so the name could be run on CPIC. The Member verbally provided his name as he said he did not have any ID on him. The spelling that was provided to the Constable of the Member's first name was "A-M-I-N". At Arrest Processing the Constable went back to speak with the CPIC operator who told him that "Amin Hammoud" had no record but an "Ayyman Hammoud" had a record and same date of birth.

The CPIC search under the correct spelling of Mr. Hammoud's name disclosed a number of outstanding warrants for the Member's arrest. Mr. Hammoud was charged with obstruction because he had provided an incorrect spelling of his first name to the Constable.

The Constable confirmed under cross-examination by the Member that initially the charge was for possession but it became trafficking after individually wrapped baggies of marijuana were found, also a knife and some cocaine was found on the driver.

The Constable's understanding was that the charges in relation to this incident were stayed against the Member due to Constable [H] not being able to show up to Court due to miscommunication and family health issues.

The Member asked whether the Constable recalled making racist remarks towards him which the Constable denied. In the course of the Member cross-examining the Constable, evidence came out that several weeks before the Law Society hearing the Constable had dealt with a young Middle Eastern male by the name of "B. H." and had made reference to the Member in a conversation with him. The Member asked the Constable why he had a racist attitude towards Middle Eastern men. The Constable denied making any racist comments, and he denied telling Mr. B. H. that the Member was "a Shmuck" and that he had got the better of him. The Member asked why the Constable had attended at his residence a few days after the charges had been laid against the Member and suggested that this was to harass the Member. The Constable indicated that he had attended at the Member's residence to check the address.

Evidence of the Member at Hearing respecting January 2010 Incident

The Member indicated that a friend had called him in the evening to go for coffee and had picked the Member up in his vehicle. A police officer followed them for 2 or 3 blocks and pulled them over. The Member stated at Hearing Transcript page 647 lines 21 to page 648 lines 4 as follows:

" So my big mouth at the time – sorry, excuse me, you know, I – I'd – when he started searching Mr. F., I'm sitting in the passenger side. I – I interjected and I said, you know, I think you're – you're conducting an illegal – illegal search. I think what you're doing is unconstitutional. And I give him that spiel. And, you know, he looked at me and he said, you know, you shut your mouth, and you sit there and you be quiet. Don't say a word. When I'm finished with your friend, I'm – I'm – I'll get to you, so not to worry. You're going to – you're going to get searched, too."

There were drugs on Mr. F. The Member said he had no idea he had drugs on him. When drug were found, Constable [TM] started checking the Member who got upset at being searched. He had bad experiences with police officers in the past and felt the

Constable had no right to search him. The Member stated at Hearing Transcript page 649 lines 14 to 27 as follows:

" And --- and then on top of searching me, he was – he was very rough physically. Very rough. His search was rough. He was – he was --, you know, he was trying to hurt me. And I remember he – he forcibly grabbed my hands, put them behind my back and put the handcuffs on, like, exceptionally tight.

And he made a few racial remarks. Exactly what, I – I made reference to them when I examined him."

At Hearing Transcript page 650, lines 1 to 5, the Member said he had mumbled the spelling of his name to the Constable and provided his correct birthdate. The Member stated that at Hearing Transcript page 650 lines 17 to page 651 lines 5 as follows:

" And the reality is he was going to finger print me five, ten minutes later anyway, so he could have established my identity. That wouldn't have been an issue. It really wouldn't. He was going to finger print me anyways. And the other thing too is I had ID on me, and they – and this is on the – if you look at the disclosure, they had – they actually had ID. So it's like – I had two, three pieces of ID on me, and that came to their attention. And they actually -- so when they checked me, they pulled out the ID. When they checked me, he pulled my ID out of my thing, so he – so – so later on, when he laid this obstruction charge, to me it was, again, another sign of bad faith. It really was. It really was. They had ID. He searched me himself. So he had – he had my ID. He did. And then he finger printed me 10, 15 minutes later, so my identity was confirmed. "

Two days after the incident Constable [TM] came to the Member's home with another police officer and it sounded like they were going to kick the door in, scared the Member's wife and was rude and threatening.

The Member indicated that the drug charges laid against him in January 2010 were dismissed not stayed. The charges relating to the domestic dispute with his parents were also dismissed on the day of trial. The Member's parents and sister had shown up earlier in the morning and let the Crown Prosecutor that they did not want to be involved with the matter.

The Member indicated to the Hearing Panel that he was not blind to the fact that he had acted inappropriately in many situations but there had also been some exaggeration by people who had testified. The Member is enrolled in an anger management course through the YWCA […] program and had been receiving counseling from Mr. [M]. The Member had decided to take the course for the anger management component and found it very helpful. The Member had also been attending therapy sessions with Mr. [M] once per week since November 2011.

Information provided by the Member to LSA Investigators respecting the incident with CPLED staff, and the incidents of November 1, 2009, and January 17, 2010.

The Member was interviewed by LSA Investigators, [RE] and [DD] on July 23, 2010. [Exhibit 24]

The Member reiterated that he had not used the word "fuck" on the phone with Ms. [PG] at any time. The Member's understanding of the issue was that Ms. [PG] alleged that he had hung up on her. The Member did not admit to [PW], the Executive Director of CPLED that he had used profane language with Ms. [PG]. In the conversation with [CS] he did use those words. With respect to Ms. [CS]'s advice to the Investigator that he had used profanity twelve times and that she was being conservative when she said that, the Member indicated that he had used profanity twice in his conversation with Ms. [CS] and that she was exaggerating.

The Member discussed with the Investigators the events of November 1, 2009, when he was charged with assaults and threats other upon family members. The Member denied the allegations that had been made by his parents and sister in relation to the events and explained that they know the system and now know how to make things plausible and real. The Member explained that his parents were furious with him for supporting his wife in relation to the incident and also in anger disclosing during the course of the argument his parents shameful past and thus embarrassing them in front of her.

The Member indicated that he had not known that he had been charged with any offences relating from the incident but that in January 2010 he had been in a car with an acquaintance from high school when they had been pulled over by the Police. Drugs were found in the vehicle but they were not the Member's. The Member was charged with trafficking. The Member had opened up his big mouth foolishly, and the police did not take kindly to it. The Member advised the police that he was student lawyer and an officer of the Court. He was charged with trafficking and obstruction.

Findings:

CPLED Incidents

The Conduct Committee finds that the Member conducted himself in his communications with both Ms. [PG] and with Ms. [CS] in a manner that brought discredit to the profession and that such conduct is deserving of sanction. Students in the CPLED program are expected to behave professionally with CPLED staff who manages the needs of nearly two hundred students at any given time. Students are provided with the CPLED Alberta handbook which sets out professional behavior and integrity

expectations and students also sign an agreement to be bound by the CPLED Professional Integrity Policy [see Exhibit 21].

The Conduct Committee does not believe that Ms. [PG] falsified information in her notes or in her evidence. The Conduct Committee believes Ms. [CS] when she indicates that the Member used profanity numerous times in his conversation with her.

The Member's evidence that he did not swear at Ms [PG], swore only twice at Ms [CS] and that when he acknowledged use of "strong language" with Mr. [PW] in relation to Ms [PG], it did not mean actual profanity, is not believed by the Hearing Committee. Both Ms [PG] and Ms [CS] made notes contemporaneously with the events and both of them were sufficiently upset by the Member's behavior to speak to their supervisor, Mr. [PW] at the time of the events. The Member's evidence is inconsistent with the evidence of three other witnesses.

Incident of November 1, 2009

The Conduct Committee does not find on a balance of probabilities that the Member conducted himself in a manner that brought discredit to the profession on this date. The Hearing Committee does not find that the Member's refusal to return to speak with the Constables about the incident at his parent's home to be discreditable conduct because that was his right and the Constables had their own remedies to potentially exercise in light of that refusal.

Counsel for the LSA suggested that the evidence of Constable [JH] would go to the Member's overall credibility. In light of the fact that the Member's family chose not to give evidence at a criminal trial and the charges were dropped, the Hearing Committee draws no conclusions as to the Member's credibility as a result of this incident.

Incident of January 17, 2010

The Conduct Committee finds that the Member conducted himself in a manner that brought discredit to the profession in relation to his interactions with Constable [TM] on January 17, 2010 and that such conduct is deserving of sanction.

It appears from the notes from the CPIC operator that the Member had provided his correct date of birth to Constable [TM] from the outset. The Hearing Committee believes the Constable when he says that he took an incorrect spelling of his first name from the Member. However, the Hearing Committee, having heard the evidence on that particular aspect of the evening, believes that it was a somewhat chaotic situation and that the spelling of his first name may not have been communicated accurately between the Member and the Constable. This Conduct Committee cannot find on a balance of

probabilities that the Member conducted himself in a manner that brought discredit to the profession in relation to the provision of his name.

The Panel does however accept the evidence of Constable [TM] in relation to the Member's rude, disrespectful and vulgar comments to him and does find that the Member on a balance of probabilities conducted himself in a manner that brought discredit to the profession and that it is conduct deserving of sanction. The Constable made numerous notes of the remarks at the time and the Hearing Committee does not believe that they were fabricated. For a lawyer to try and "pull rank" on a police officer, insult them and threaten them with loss of their job is an embarrassment to the legal profession.

With respect to the Member's assertion that Constable [TM] is to be disbelieved in entirety because he had formulated a negative opinion about the Member, the Hearing Committee does not find any evidence to suggest that Constable [TM] is racially motivated against young Middle Eastern men or that he fabricated evidence as to the Member's behavior that night.

Citation "2"

2. IT IS ALLEGED that the student failed to be candid with the Law Society and that such conduct is conduct deserving of sanction;

Issues:

a. Did the Student fail to be candid with the LSA when he applied to become a student-at-law and in his interviews in 2010 with the LSA Investigators?

b. Is that conduct, conduct deserving of Sanction?

Applicable Law:

Rule 2 of Chapter 3 of the Code of Professional Conduct, Relationship to the Profession as it then was states that : *"All correspondence and remarks by a lawyer addressed to or concerning another lawyer, the Law Society or any other professional organization or institution must be fair, accurate and courteous. "*

Rule 3 of Chapter 3 of the Code of Professional Conduct, Relationship to the Profession as it then was states that: "*A lawyer must respond on a timely basis and in a complete and appropriate manner to any communication from the Law Society that contemplates a reply."*

Positions:

There were two aspects to the LSA's position in respect to this citation.

Firstly, LSA Counsel argued that the two applications to become a student-at-law completed by the Member did not contain candid disclosure to the LSA of the events surrounding Dr. P.'s assault.

LSA Counsel argued that in his first application the Member had provided a version of events to the LSA that did not agree with the evidence of Dr. P., nor the fact he was convicted, and that this went further than failing to be candid, it put the matter in the realm of attempting to mislead.

The Member swore a declaration on the applications which stated that he conscientiously believed the information he provided to be true. Counsel for the LSA argued that the test for the Hearing Committee is whether the Member could have a reasonably held belief that the facts were true and that the Hearing Committee needed to make a credibility assessment in this regard.

LSA Counsel argued that the evidence entered at the Hearing surrounding the Member's pleading guilty to the assault are such that there is no reasonable air of reality to the Member's assertion that he believed he was convicted of the facts as he outlined during his interviews with the LSA and in his applications to the LSA.

The Member's position in relation to his applications to the LSA in 2006 and 2008 was that he had responded with the facts of the assault as he believed them to be. In support of this position the Member provided an explanation that he had only pushed Dr. P. once, that he had never wanted to plead guilty, that because his charge was waived up to Edmonton for the convenience of his criminal lawyer a guilty plea was entered, that the Statement of Agreed Facts was entered by his lawyer without his consent and thus the facts agreed to were not the accurate facts nor did the Member agree with them now.

Secondly, Counsel for the LSA took the position that the Member had not been candid with the LSA Investigators in relation to:

- the incident with Dr. P.,
- an incident that he had with his principal [JI] on the last day of his employment there,
- any criminal charges he had, and
- his supervised position with Mr. [NB].

The Member denied the minor assault upon Mr. [JI] and suggested that it was a concoction on the part of Mr. [JI] who knew of the Member's assault conviction from the past.

The Member's position was that he had not known of the requirement to report any criminal charges to the LSA and that he had informed the LSA of his criminal charges after the Investigators pointed out to him the requirements of Rule 105.

In 2010 the Member asserted that he had never agreed to Mr. [NB] being his supervising lawyer and it was an arrangement made by Mr. [SR] and Mr. [NB].

Evidence:

The evidence in relation to this citation was provided by [AG], Dr. A. P., [JI] and [NB]. The evidence of Mr. [NB] is reviewed under the discussion in these reasons relating to Citation 3.

Other evidence in relation to this citation is contained in the following Exhibits:

Exhibits 6 – Form 2-1, Application for Admission as a Student-at-Law, declared by the Member on April 4, 2006;

Exhibit 7 – Form 2-1, Application for Admission as a Student-at-Law, declared by the Member on December 8, 2008;

Exhibit 32: The decision of Dean [PH], Faculty of Law dated January 14, 2002: "In the matter of the suspension of Ayyman Hammoud";

Exhibit 33: "Report of the General Faculties Counsel Committee to Review the Decision of [PH], Dean, Faculty of Law to Temporarily Suspend for Non-Academic Misconduct" dated February 15, 2002.

Exhibit 34: The Member's Petition to the Board of Governors of the University of Calgary dated April 15, 2002.

Exhibit 35: The Official Transcript of Proceedings of March 4, 2003 relating to waiver of the criminal charge of assault to Edmonton, Alberta and entry of the Member's guilty plea to a summary conviction offence on the client's instructions.

Exhibit 36: The Official Transcript of Proceedings Excerpt from April 25, 2003, the speaking to sentence at which both the Member and his Counsel were present.

Exhibit 54 - Crown Disclosure sent to the Member and dated February 1, 2010.

Evidence of [AG]

[AG] is the credentials and education lawyer for the LSA membership department and oversaw the administration process for the Member to become a student-at-law in 2008.

Ms. [AG] advised in her evidence that where a student has a history of a criminal offence, no further investigations are undertaken by the LSA, which relies upon the truthfulness of the applicant as to the particulars of the offense.

Ms [AG] advised that on April 4, 2006, the Member completed an Application for Admission as a Student-at-Law [Exhibit 6].

In the 2006 Application the Member had ticked "yes", to statement 7(b) on page 2, "*I have plead guilty to or been found guilty of an offence under any act of the Parliament of Canada where the offence what prosecutable either as an indictable offence or a summary conviction offence*".

The Member also ticked "yes" to the following statement 7(c) on page 2 of the Application: "*I have pleaded guilty to or been found guilty of a summary conviction offence under the Income Tax Act, Criminal Code, the Narcotic Control Act, the Controlled Drug and Substances Act or the Food and Drug Act of Canada, or the Income Tax Act or the Securities Act of any Province of Canada".*

The Member also ticked off statement 14 on page 2 with a "yes": "*I have disobeyed an Order of the Court*".

The Member provided the following particulars in an addendum to Exhibit 6 as follows:

"*Further to my affirmative statements made in section 7 to 23, the following are the particulars:*

In January 2002, I was enrolled in a 7-day course at the University of Calgary through the Faculty of Management. At the time I was in my third year of Law School. On the last day of the course, the Professor requested I stay after class so that we may speak. I complied with his request and met him after class. During our exchange, we began to argue and when the argument escalated I turned away with the intention to leave, however, the Professor forcefully grabbed my hand and insisted we conclude the discussion. I pulled away and released my arm from his grasp, and I pushed him away in the process. I was subsequently charged with common assault (simpliciter) and convicted thereafter.

I plead guilty to the aforementioned assault and I received 12 months' probation and 100 hours of community service. I failed to complete the community service within the time allotted and consequently I was charged with breach of probation that I plead guilty

to. I have since fully satisfied the conditions of my probation including the completion of the 100 hours of community service."

The Member entered into articles of clerkship and the LSA received the signed articles of clerkship and contract on April 5, 2006 signed by the proposed Principal [Exhibit 38].

On April 27, 2006, the proposed Principal wrote to the LSA informing that she no longer desired to act as the Member's Principal [Exhibit 39].

The Member provided a letter to the LSA withdrawing his application as a Student-at-Law at that time.

Law Society Counsel advised the Hearing Committee, later in the proceedings, that in 2006 the LSA had asked the Member to provide "Crown disclosure" in relation to his application and that he had not.

On December 10, 2008, the LSA received another application from the Member to become a Student-at-Law in Alberta [Exhibit 7].

To statement 4(b) on Page 2 *"I have pleaded guilty to or been found guilty of an offence under any act of the Parliament of Canada where the offence was prosecutable either as an indictable offence of a summary conviction offence",* the Member ticked *"no".*

To statement 4(c) on page 2 which is the same question as asked on the 2006 form at statement 7(c), the Member ticked "*yes".*

At statement 11 *"I have disobeyed an Order of the Court",* the Member ticked *"no".*

In his 2008 application the Member attached an explanatory letter to his application [Exhibit 7, page 5]. The content of that letter is as follows;

"Further to the fact that I responded "yes" to question 4(c) on my application for admission I will state the following. In December 2001, I was charged with common assault (sec. 266) against another man. The allegations involved a minor assault. This was an isolated incident that occurred a long time ago. I also was subsequently charged and convicted with breaching the probation order that resulted from the assault conviction. The breach occurred when I was alleged to have failed to report to a probation officer in time.

I will forward official documents pertaining to these convictions as soon as they become available."

On December 8, 2008, the Member entered into articles of clerkship with [JI], who was accepted as a suitable Principal for the Member.

On March 27, 2009, Mr. [JI] wrote to the LSA indicating that effective March 5, 2009, the Member's employment with his offices was terminated [Exhibit 41]. The Member's article commencement date with Mr. [JI] was January 15, 2009. Mr. [JI] did not provide a letter to the LSA at the end of the period he was acting as Principal. The Member applied and was given a credit for that period of time by Ms. [AG].

On April 8, 2009, the Member entered into articles of clerkship with [DS] for 10.5 months [Exhibit 42]. The Member completed his period of articles with Mr. [DS] and the LSA received a Certificate of Principal on March 10, 2010, evidencing that the Member had completed the requirement.

By March 2010, the Member had completed his articling requirements but was unable to complete his CPLED requirements for the reasons outlined above. In those circumstances where a student-at-law has completed their twelve months of articles but is not yet in a position to be called or to apply to be enrolled as a Member they can engage in an approved working arrangement, which means they are working under the supervision of an active member of the LSA in a similar situation as an articling student.

On April 16, 2010, the Member applied to be granted the ability to work in an approved working situation with Mr. [SR]. Due to her concerns about the proposed supervising lawyer, Ms. [AG] sent a letter to the lawyer, suggesting that he assist the student to find somewhere else to work.

On April 30, 2010, Ms. [AG], received an Undertaking from Mr. [NB] offering to be the Member's supervising lawyer [Exhibit 43]. Ms. [AG] approved that application, believing that the Member would be working at [S], the firm where Mr. [NB] worked, and would be undertaking work for persons in that firm as supervised by Mr. [NB].

It came to Ms. [AG]'s attention through the LSA Investigator on May 25, 2010, that although Mr. [NB] was his supervisor, the Member was actually working with Mr. [SR]. Mr. [SR] and Mr. [NB] do not work in the same offices. Had Ms. [AG] known when she approved Mr. [NB] that the Member would be working on Mr. [SR]'s files she would not have approved the working arrangement.

On June 1, 2010, Mr. [NB] wrote to the LSA and requested confirmation that he was released from his Undertaking [Exhibit 44].

The Member has been working under an approved working arrangement with Mr. [TD] since December 20, 2010.

Ms. [AG] indicated that on December 1, 2010, she had sought the Member's permission to communicate with Mr. [TD] so that he had the proper information before he hired Mr. Hammoud.

Evidence of Dr. A. P.

The reasons for the decision of the Hearing Committee to permit the Law Society to call Dr. P. are set out below. Dr. P. gave his evidence on April 26, 2012.

Dr. P. was employed as a Professor at the University of Calgary in January, 2002, with the Haskane School of Business teaching a block week course in which the Member was enrolled. The Member missed 20% – 25% of the class time in a class that emphasizes participation. On the last day of class, Professor P. spoke to the Member, explained he was concerned about his absence for a significant portion of class work and wanted to discuss him doing additional work to compensate for the missed time. The Member did not react well to the suggestion and felt he was being treated unfairly.

At Hearing Transcript page 517, line 11 to page 518 line 4 Dr. P. said:

" At which point, without warning he started basic -- he punched me. He punched me in the forehead, across the desk, I would say 3 or 4 times, with a closed fist. Certainly never had contemplated anything like that, ever. As a professor at that point, I had been teaching for over 25 years. And as soon as I got over my shock, what was happening, I managed to go around the desk, and there's a...sort of an outer aisle way and -- and left the class. You know basically at a quick pace, left the class.

He followed me. And as we got into the large atrium area on the main floor of Scurfield Hall, I started shouting that I --I had been attacked. I had been hit. And I pointed to Mr. Hammoud. I was very shaken. I understand -- although I didn't witness --as he kind of walked out of the classroom, others intervened and apprehended, or basically asked him to remain while this thing got sorted out.

I completed a police report of the incident, and those were the main facts of --of what had-- what had occurred."

With respect to injuries Professor P. advised: *"I had a couple of abrasions. I think --you know, I wear glasses, and I think where it connected where he hit me, and it made some -- you know-- some minor bruising, and I think maybe a small cut. But nothing physically that lasted very long."* [Transcript page 518, line 7-11].

When cross-examined by the Member, Professor P. was certain that he had been hit 3 or 4 times with a closed fist.

Evidence of Member at the Hearing respecting the incident with Dr. P.

The Member acknowledged that there had been an argument over a few things, particulars of which he did not quite remember anymore. He and Dr. P. were both at one point tugging on a piece of paper.

The Member then stated as follows [Hearing Transcript page 605, lines 2 – 21]:

"And then at some point, you know, we had – we were kind of – we tugged and pulled on, you know, with respect to this paper. It was like – you know, it was and exchange. And at one point I remember I did get agitated and I pushed him.

MR. JACQUES: You pushed the table?

A. No. I pushed Dr. P.

MR. JACQUES: oh.

A. I pushed Dr. P. As soon as I pushed -- it was sort of something like this kind of thing. And that was it. That was the extent of the physical contact there was.

And again, I'm not minimizing, please -- because I don't want the Panel to misunderstand -- clearly, clearly, clearly wrong, clearly inappropriate. There's no question about it. I mean -- but I just disagree with Dr. P.'s version. There was not three to four punches. That did not happen. That did not happen.

The -- it was -- the -- it was a one-time thing. It was -- that was the only time I made contact with him physically. That was the only contact I made with him."

The Member pled not guilty to the assault charge and showed up at Court for the day of trial, in Calgary. Dr. P. and the police officer that had laid the charges were in attendance. His lawyer (in Edmonton) gave the Member instructions to waive the charges to Edmonton. The Member did not know at the time what a waiver was. A few months later he was advised by his lawyer that a hearing had been scheduled for him in Edmonton and he was required to appear which he did. The guilty plea had been entered, a Statement of Facts had been admitted, but the Member indicated that he never really actually saw them until relatively recently during the LSA investigation.

Evidence of [JI] to Investigators

Mr. [JI] was interviewed by [GP] and [RE], LSA investigators, on June 10, 2010 [Exhibit 45]. The Member had articled with him for approximately two months from January to March 2009.

Mr. [JI] advised the investigators that he had tried to provide an educational article to Mr. Hammoud but it did not work out. Mr. [JI] was not prepared to sign off on the Member's articles after they were terminated.

Mr. [JI] was not initially forthcoming with the investigators with respect to the reasons why the article had terminated. Mr. [JI] referred to the decision to terminate articles as "a mutual thing."

Mr. [JI] indicated that a letter from the Membership department asking for an explanation as to why the student lawyer relationship has dissolved had not: *"made it to his desk".* Mr. [JI] spoke of the articling relationship with the Member as a bad experience, that students' expectations today are different and they do not want to pay their dues, that the Member felt himself to be a lawyer already. Again, Mr. [JI] was asked whether there was any specific situation that stood out and expressed that he had moved on.

The interview was closed down and restarted approximately 15 minutes later. It was at that time that Mr. [JI] disclosed that on the day that he and the Member terminated their relationship there was an issue with respect to the Member's cheque. Mr. [JI] had not planned to let the Member go that day. The Member wanted Mr. [JI] to take off fewer of the deductions and Mr. [JI] had indicated that he would look into it but could not deal with it at that moment.

Mr. [JI] stated: "*and then I remember him, he slapped the desk, and he sort of challenged me, and came over and took a swing at me, sort of hit me on the side of the face and started yelling, screaming at me. I got up and certainly to sort of defend myself, and we actually ended up out in the hallway there, and my associate, J., called, I believed she called 911, but ultimately he was asked to leave, and you know, after a little bit of heated discussion, he left, and then so that was, that was it. You know."* [Exhibit 45, page 20, line 15 to 26.]

No one witnessed the assault. Mr. [JI] went on to say that the Member denied to the associate that he did anything and called Mr. [JI] names. They met subsequently and Mr. [JI] indicated that he was going to terminate the relationship. When they met a month later the Member was concerned about what Mr. [JI] might say to the Law Society, and Mr. [JI] stated: "*I just sort of said, you know, that's – I just don't want to be part of anything like that. You know*." [Exhibit 45 page 23 line 16 to 18].

Evidence of [JI] at Hearing

Mr. [JI] confirmed the information that he had provided to the Investigators in relation to the events of the Member's last day of employment with him. The Member had taken a

swing at him with a closed hand and he had a red mark or graze on his face as a result. They met a month later to speak and to decompress the situation.

When cross-examined by the Member Mr. [JI] advised that he was not a Member of the Mafia, he was Jewish, nor was he a Member of the Hell Angels motorcycle gang. He did not even own a motorcycle. Mr. [JI] did not recall calling the Member at his new place of employment although he may have had to try to find him to provide him with his T-4.

When asked about his response to Ms. [GP], when asked why the articles ended and his response: *"I think it was a sort of mutual thing."* Mr. [JI] responded as follows [Hearing Transcript page 173 line 5 to page 174 line 4]:

"A. Well I think that you sucker punched me and I told you that you're done, and then you left so I think we were both on the same page I think that's pretty mutual no?"

Q. So that's – that's what you were referring to, as far as it was a mutual thing?"

A. I – I think we both were on the same page when you left.

Q: Again no --?

A. I – again, I just – I didn't amplify. To be honest with you, I didn't want to be involved in any – anything like this. I apologize for that. But it happened some time ago and so I didn't feel the need to sort of – you know

Q. You –

A. to be honest with you, it sounded like you were in a bit of a bad way, and I didn't want to add to it. Unfortunately, further discussion, I was advised by the investigators that if I wasn't completely truthful, that – that certainly I could be at risk. And so that's when I disclosed.

Q. so you acknowledge you weren't being completely truthful with the investigators initially?

A. I'm acknowledging that I didn't tell them about the scenario and – until we had further discussion, and then I elaborated on it."

When cross-examined, Mr. [JI] indicated that he did not believe that he was aware that the Member was convicted of an assault in 2002. He had no reason to disbelieve that the Member provided a description but could not recall it now.

Information provided by the Member to Investigators respecting the incident with Mr. [JI]

The Member was interviewed by LSA Investigators, [RE] and [DD] on July 23, 2010 [Exhibit 23].

The Member was asked about his July 22, 2010 letter to the LSA complaints officer in relation to his time with Mr. [JI]. The Member alleged to the investigators that Mr. [JI] had alliances with the Hell Angels through his clientele and that he also had ties with the Italian Mob and that there had been mention of the Hells Angels during the meeting he and the mutual friend had had with Mr. [JI]. The Member alleged that after he found a new position of articles, that Mr. [JI] had persisted and called him twice in relation to the Member owing him $500 [Exhibit 23, page 66 line 13 to 15].

The Member described Mr. [JI] as an extortionist, as dangerous. Mr. [JI]'s version of the events of the argument was put to the Member by the investigators, which was that the Member had: *"sucker punched him on the side of the head"* and the Member denied it. The Member suggested to the investigators that Mr. [JI] knew of his history with Dr. P., as the Member had disclosed it to him, and had fabricated the incident.

Evidence of Member at Hearing respecting the incident with Mr. [JI]

The Member's evidence was that he was introduced to Mr. [JI] by a friend who was one of Mr. [JI]'s bigger clients. Mr. [JI] interviewed the Member in December, 2010 and agreed to take on the Member as a student. The Member said that he did disclose to Mr. [JI] the Dr. P. incident and Mr. [JI] did not appear to be disturbed by it. The Member described Mr. [JI] after a few weeks as being very difficult and abusive, mean-spirited and hard.

In relation to the alleged assault on Mr. [JI], the Member stated at the Hearing Transcript page 627, lines 6 to 8:

"I did not physically make contact with him-- make contact with him that day -- I did not physically make contact with him."

The Member's evidence was that a colleague came in after the argument had started and Mr. [JI] claimed to that person that Mr. Hammoud had hit him or slapped him and that the Member was shocked. The colleague wanted to call the police but was stopped from doing so by Mr. [JI] despite the Member being agreeable to the suggestion.

The Member indicated that he had not been paid for the period February 1 to March 5, 2010 and later called Mr. [JI] for his cheque. He and his friend scheduled a meeting with Mr. [JI] a couple of weeks later. Mr. [JI] refused to pay the Member and alleged that the Member owed him money for purchase of business cards. The Member stated at Hearing Transcript page 632 lines 18 to 23:

""And during that same interview, he more or less threatened me. He said, you know, if I was to cause him anymore grief or this or do this or do that, he would -- he could make a phone call. He had friends with the Hells Angels. He could -- he could really harm me. And that -- that was a threat that was made in front of Mr. [A]."

In his evidence the Member stated that he had then received two calls later from Mr. [JI] while he was working with [L], where Mr. [JI] was mocking and sarcastic.

Information provided by the Member to Law Society Investigators at three Interviews

Interview by LSA Investigators, [RE] and [GP] on June 1, 2010 [Exhibit 21].

On June 1, 2010, the Investigators asked the Member about the criminal conviction for assault on Dr. P. The Member was reluctant to discuss the matter. On page 8 of Exhibit 21, line 1-3, the Member stated: *"Someone alleged that I had…I made contact. Very, very--circumstances were very, very minor and, like I said, it was dealt with and-- ya."* The Member claimed that he had plead guilty by waiving the charges to Edmonton without knowing what was going on and that he had completed his probationary period and community service hours both successfully.

The Member was clear that he did not wish to discuss the matter. The investigators reminded him of the Rules of the LSA that obligated him to cooperate with them and that the Manager of Complaints might be of the view that by not answering the questions he was failing to cooperate and that a citation could issue.

Interview by LSA Investigators, [RE] and [DD] on July 8, 2010 [Exhibit 22].

The Member advised the Investigators that the only conviction he had ever had was the assault with respect to Dr. P. from the University of Calgary and a subsequent conviction for failure to comply with a probation order. The Member explained that he missed reporting to the probation officer once at what was to have been his last appointment and was breached as a result, resulting in the second conviction.

At page 12 of the July 8, 2010 Interview the Member was questioned as to the divergence between what he had indicated was the reason for the second conviction and what he had indicated in his application to the LSA. The Member said at pages 12, line 23 to page 13 line 20 as follows:

"A. I this is it. Yeah. So I pled guilty to the aforementioned -- I received 12 months' probation and 100 hours community service. Yeah. Maybe the 12 months might have been 14. I failed to complete the community service within the time allotted and consequently was charged with breach of -- you know, it wasn't -- I'm pretty sure it didn't have nothing to do with the community service hours though. I'm pretty sure it was --

I'm almost 100 percent guaranteed it was I missed that last appointment I had with my probation officer. That was why I was breached.

It wasn't -- had nothing to do with the community service hours. I recall asking for an extension with respect to the community service hours, and it was granted. I had asked a court of law for that, so the breach was no -- I know I wrote this. I'm pretty sure I wrote this too. I don't know if I actually wrote this myself.

Q. Well, that's right out of your application.

A. Yeah. Yeah. I know. I acknowledge that I attached this to my -- I can't remember whether it was me that actually wrote this word for word, so this may be inaccurate with respect to the breach.

Q. Who would have wrote that if you did not write it?

A. At the time it could have been my girlfriend. She was just a little better at writing. At the time I was dating somebody that was quite fluent with the English language.

A. But either way though it's --

A. I guess it wouldn't make too much of a difference whether it was as a result of the community service hours."

At page 14 of the same Interview transcript, further information was elucidated from the Member, that:

- The Member had asked for an extension of community service hours;
- That the community service hours were completed outside the 14 month probationary period;
- That as a result of the second charge 10 months of probation were added;
- That the Member had been pulled over arrested on an outstanding warrant with relation to the second charge.

When the Investigators asked the Member what he had been charged with criminally as an adult, the Member refused to respond saying: "*I think the only thing you should be concerned about is convictions."* The Member became upset at this stage and asked to speak to his lawyer. The interview was adjourned for 15 minutes in order for this to occur.

The following exchange occurs between the Investigator and the Member at Exhibit 22, page 21 line 23 to Page 22, line 7:

"Q --that there might be something else going on in the Court system because you hadn't applied for a pardon, and you are a little sluggish about wanting to talk to me about that. So today I'm getting -- the same opinion.

A… Actually no. You know you really got the wrong impression about that. The only reason I haven't applied for a pardon -- I've been entitled to a pardon for years and years. The only reason I haven't applied -- and I was this to be on the record in no uncertain terms. The only reason I haven't applied for a pardon is sheer laziness and procrastination, nothing more, nothing less."

The Investigator reiterated that he had the impression from the interviews that there was something outstanding and that under section 105 of the Rules of the Law Society if the Member had any criminal charges before the Court that were indictable or in dual process that he was required to report these to the Law Society upon the charges being laid. The Member asked to go off the record. The Member was offered a copy of Rule 105 of the Rules of the Law Society and declined to read it. At Exhibit 22, page 23, lines 22 – 25 the Member states:

"A. Can I speak to Mr. [Z] directly, is he around today? And by the way, let the record reflect as well when you guys are walking by me in the hall way and you laughing and giggling. Is this funny to you guys?

Mr. [RE]: This isn't funny at all.

A. My livelihood is on the line, my career is on the line here. I haven't worked -- I have been unemployed since April, and this is funny to you guys?

Mr. [RE]: I haven't giggled or laughed I don't even know what you are talking about.

A. You were walking by me in the --

Mr. [RE]: I was in here.

A. Both of you guys were

Mr. [DD]: It certainly wasn't in relation to this my friend."

The interview ended when the Member left, advising the Investigators that his lawyer would be in touch.

Interview by LSA Investigators, [RE] and [DD] on July 23, 2010. [Exhibit 23]

The investigators wanted Mr. Hammoud to sign the waivers for the criminal background search and for the Provincial and Federal Crown's Offices. The Member indicated that he had some lawyers tell him not to sign these. The Member stated at Exhibit 23 page 3

line 19; *"There's some reluctance. I have copies at home."* and that he would discuss the issue further with his Counsel.

With respect to the criminal background search, the Member indicated he would discuss this with counsel but that he was here to provide complete disclosure and that he would make sure that the LSA investigators got the disclosure from the Provincial and Federal Crown.

The Member was again questioned as to the incident with Professor P. and at Exhibit 23 page 16, line 14 to page 17 line 2, provided the following explanation:

"A. There was obviously a conflict as to my account of what occurred versus his account. And I've apologized, and I don't want to minimize -- I don't want to sound like I'm minimizing the extent of what happened at the time, but I don't remember – I absolutely did not actually hit him three times. I don't remember striking him. I do remember pushing him though.

And I think that was one of those reasons why I wasn't apologetic as maybe I should have been afterwards was I felt that he had exaggerated a bit as to what actually had transpired, but nevertheless, you know, I definitely did push him. So, you know, I apologize for that, and I paid – I paid – you know, I served my sentence for that. I paid a big price for that. I had a lot of time to think about it afterwards, so, you know, I have my regrets too."

In the interview the Member reiterated his version of the assault upon Dr. P. relating to a struggle over a piece of paper and that he had only pushed Dr. P. away in the shoulder area.

The Member discussed the circumstances of the charge being waived to Edmonton, and that he had believed that there would be a trial in Edmonton at some point in time. He had wanted to go to trial.

The Member indicated that he did not recall giving his consent to the agreed Statement of Facts that was entered in Edmonton at the time of the guilty plea. The Member remembered the sentencing hearing but not the details. At page 27, lines 6 -10 he states: "*But formally speaking and knowing what I know now, at some point that statement of facts would have been entered, and whether I gave my consent or not, is it's assumed that I consented to it".*

The Member reiterated that Dr. P. had exaggerated the incident a bit and at exhibit 23, page 27, lines 18 – 27 the Member stated*:*

"A. Absolutely, that's why I took issue with it, because he reported that I punched him with a closed fist. I never did. Again it was a shove. You know, it could have been

easily characterized as a punch but it was an open fist. The understandably I would have – had he reported that, that would be understandable, but the fact that he reported that I punched him two or three times with a closed fist, I took issue with. I thought he was exaggerating. To me, I'm like, OK. That's a little too much. Perception is one thing and that, but I think that was….."

"Q. But are you in agreement that that was – those were the facts that were before the Judge?

A. Absolutely, yeah I think it was – I think he had reported I punched him once though. I don't think it was several times.

Q. My recollection is 3 times.

Mr. [RE]: Yeah that's – I that's what the circumstances that were read into the Court said.

A. There's reference to it here to in this disclosure. Hammoud was extremely agitated and reach across P.'s desk and with a closed fist punched P. to the left of the side of his head and face. It seems to indicate it was only 1 time based on this statement, but – here. I don't recall it was in fact – or if he did in fact report that I punched him more than once."

When discussing his expulsion from the University of Calgary for non-academic misconduct the Member explained that the University Panel never really got his side as he was represented by a second year Law Student.

In relation to his arrest on the breach of probation in 2004 the Member informed the investigators that he was beaten up on that occasion by four or five police officers, kicked and punched, charged with five counts of assault on a police officer with no provocation and that after the video tape was released by Calgary Police Services, which supported his version of events, the charges were finally dropped in March of 2006 and that this had impacted his ability to apply for articling during that time.

The Member was asked whether he had been charged with anything else during this period of time and he indicated that due to being financially destitute he did get a ticket for driving a vehicle with no insurance and no registration.

The Member acknowledged that he was seeing a Psychologist and had spoken to a couple of different lawyers and recognized that he was trying to get technical with the Investigators previously in terms of what he could and could not provide but was now just prepared to let them know what had happened and let the chips fall where they may.

With respect to why the Member had not advised the LSA that he had been charged in relation to the incident with his family the Member indicated that he did not realize he was under an obligation to do that.

When the Investigators discussed with Mr. Hammoud at the third interview his behavior at the end of the second interview the Member indicated that he had now read Rule 105 of the Legal Profession Act and understood that he needed to provide full disclosure to the LSA. The Member was still not prepared to sign the authorization for the criminal record history with the Investigators but indicated he had signed a similar authority via the initial application he made to the LSA when he applied to be a student-at-law.

Other evidence:

The evidence also shows that on July 14, 2010, the LSA Complaints Department wrote to the Member to advise that it had come to the LSA's attention that the Member has several criminal charges outstanding and had not reported them, and also that the Member had refused to answer Investigator's questions about those matters [Exhibit 24].

On July 26, 2012 the Member wrote to the Executive Director of the LSA to inform him of the offenses he had been charged with while a student at law and that he had informed the Complaints Department. [Exhibit 25].

On August 6, 2010 the LSA Complaints Department sent a second letter of request to the Member.

On August 12, 2010 the Member provided a letter to the LSA Complaints Department advising that he had not received the July 14, 2010 letter and explaining the charges [Exhibit 28].

Findings

Candour in relation to the Member's Applications to Become a Student-At-Law:

The Hearing Committee finds that when he made his 2006 application, Mr. Hammoud was not candid with the LSA and that this is conduct deserving of sanction.

The checkboxes were filled out adequately but the particulars in the addendum to that application were overall not accurate. The Member's addendum inferred that Dr. P. was the person to initiate contact and that the Member's response was to pull away and then push Dr. P. in the process.

The Member also did not explain that he not only failed to complete community service within the time allotted but also failed to attend an appointment with his Probation

Officer and was charged with two breaches of his probation. That discrepancy is not of enormous significance to the Hearing Committee.

Although the Member was not completely candid, there was certainly sufficient information in his first application such that the LSA could make any inquiries that they considered necessary. The LSA did apparently request from the Member a copy of the Crown disclosure but the Member did not provide a copy. In fact the Member withdrew his application in 2006.

With respect to the second application of the Member to the LSA dated December 10, 2008, the Hearing Committee finds that the Member was not candid with the LSA and that such conduct is deserving of sanction. The Member ticked *"no"* to statement 4(b) on page 2, when in fact he had pled guilty to or been found guilty of an offence prosecutable either as an indictable offence or a summary conviction offence. The Member provided an explanation of the assault in an addendum but the Member characterized it as a minor assault.

The Member also marked "no" at section 11 of the form to the statement: *"I have disobeyed an order of the court."* The Member disclosed a breach of probation in in his explanatory letter, although he referred to one breach not both. Overall the facts provided by the Member to the LSA in the 2008 application were misleading to the LSA.

Of interest, the 2006 version of the application for admission as a student-at-law, Statement 8, requires an applicant to respond "yes" or "no" to the following statement: *"I have pleaded guilty to or been found guilty of academic misconduct." Likewise, t*he 2008 version of the application [Exhibit 7] requires an applicant to respond to the following statement; *"I have plead guilty to or been found guilty of academic misconduct."* The Member was found guilty of non-academic misconduct in relation to the assault on Dr. P.. The forms simply do not address this type of offence and perhaps in future it should be amended to do so.

Candour in relation to the Member's interviews with the LSA Investigators in relation to the incident with Dr. P., an incident that he had with his principal [JI] on the last day of his employment there, in relation to any criminal charges he had, and in relation to his supervised position with Mr. [NB].

The Hearing Committee finds that the Member was not candid with the LSA Investigators in relation the assault upon Dr. P. and that this is conduct deserving of sanction. In the interview with LSA Investigators the Member's version of the assault upon Dr. P. was that it was a struggle over a piece of paper and that he had only pushed Dr. P. away in the shoulder area. This was also the Member's version of events at the Hearing. It was not the evidence of Dr. P. and it was not the facts that the Member pled guilty to and for which he was convicted. There are multiple examples in

the Exhibits where the Member accepted the Crown's facts as alleged during the sentencing.

For example, part of the consented to material provided to the Hearing Committee in the Exhibit Binders were:

> Exhibit 35: The Official Transcript of Proceedings of March 4, 2003 relating to waiver of the criminal charge of assault to Edmonton, Alberta and entry of the Member's guilty plea to a summary conviction offence on the client's instructions.
>
> Exhibit 36: The Official Transcript of Proceedings Excerpt from April 25, 2003, the speaking to sentence at which both the Member and his Counsel were present.

The evidence in Exhibits 35 and 36, differs from what Mr. Hammoud had advised the LSA of in relation to the Dr. P. incident, and from what he asked the LSA to accept both by way of the applications he made to become a student-at-law and in his interviews with Investigators.

The Member's version of events is not consistent with other evidence entered in this hearing, such as Exhibits 32, 33, 34, 49, 50, 51, and 52.

The Hearing Committee finds that the Member was not candid with the LSA Investigators in relation to the incident with his principal, [JI], and that this is conduct deserving of sanction. The Hearing Committee accepts the evidence of Mr. [JI] that the Member hit him on the side of the face. The Hearing Committee believes Mr. [JI]'s evidence despite the fact that he was extremely reluctant to discuss the incident with the Investigators. What makes the Member's evidence about this incident particularly unusual is the Member's assertions that Mr. [JI] is somehow connected with the Mafia and the Hell's Angels motorcycle gang. It is very difficult to understand why the Member would persist in making this claim to the Hearing Committee with the expectation of maintaining credibility.

The Hearing Panel Committee also finds that the Member failed to be candid with the LSA in relation to his arrangements with Mr. [NB] and misled the LSA when he participated in the plan with Mr. [NB] and Mr. [SR] to work under a supervised arrangement that did not meet the requirements or expectations of the LSA and that this is conduct deserving of sanction.

The Member's evidence to the Investigators was that: "*And --but as for the disclosure with [NB], I never asked him for the position. It was strictly Mr. [SR].*" [Exhibit 23, page 120].

The Member also said to the Investigators: *… you know what. I'm going to resign. I'll make it easy for you because I could see he was concerned. He was concerned again just to cover his own butt. He thought maybe he did something that violated some sort of Law Society policy, so I said, [NB], I'll make it easy for you. I'll-- that's it. I'll just end it. Inform the Law Society that there's no longer a working arrangement, simple as that. And that's what precisely what we did"* [Exhibit 23, page 120 line 2].

The Member's evidence at the hearing was that the supervisory arrangements were made by Mr. [NB], Mr. [SR] and the Member on an "in case needed" basis, and that he never had a discussion with Mr. [NB] about it. [Hearing Transcript, page 612, lines 15-24.] The Hearing Panel does not accept that the arrangements for the supervised position with Mr. [NB] were undertaken without discussion with the Member and without his knowledge. The entire arrangement was for the Member's benefit and it is not plausible that he would not know about the arrangement. This assertion on the Member's part defies common sense. The Member told the Investigators that he ended the working relationship, which is very different than not knowing about it. He did not report the two lawyers to the LSA for making a false application to have him work as a student.

Mr. [NB] signed an Undertaking to supervise the Member. Clearly from its wording, the Undertaking was intended to be at his offices and direct supervision. The context of the request to Mr. [NB] also makes this eminently clear because Mr. [SR] had been asked to find someone else to supervise the Member.

The Hearing Panel Committee finds that the Member further was not candid with the LSA investigators when asked what he had been charged with criminally as an adult and that this is conduct deserving of sanction. It was not until the Member was "boxed in" by the questioning of the Investigators during an Investigation, and had been sent two letters from the LSA, that he informed the LSA of the additional charges against him.

Citation "3"

3. IT IS ALLEGED that the student failed to be candid with another lawyer and that such conduct is conduct deserving of sanction;

Issues:

a. How did the Student fail to be candid with Mr. [NB]?

b. Is that conduct, conduct deserving of sanction?

Applicable Law:

Rule 1 of Chapter 4 of the Code of Professional Conduct, as it then was, Relationship of the Lawyer to Other Lawyers, states that: *"A lawyer must not lie to or mislead another lawyer. "*

The commentary to Chapter 4, Rule 1 states:

"C.1 This rule expresses an obvious aspect of integrity, one of the fundamental principles underlying this Code. In no situation, including negotiations, is a lawyer entitled to deliberately mislead a colleague (see also Rule #1 of Chapter 9, The Lawyer as Advisor, and Rule #1 of Chapter 11, The Lawyer as Negotiator)

Positions

The position of the LSA is that the Member misled Mr. [NB].

The position of the Member is that he had no knowledge of Mr. [NB]'s application to act as his supervisor and therefore he had no obligation to be candid with Mr. [NB].

Evidence

The evidence in relation to this citation was provided by [NB].

Exhibits 43 and 44 also relate to this citation.

Evidence of [NB]

Mr. [NB] indicated that he had been introduced to the Member by lawyer, [SR]. Mr. [SR] was trying to find other lawyers to work with him but was unable to take on an articling student. He asked whether Mr. [NB] was: *"prepared to assist him just with registering Mr. Hammoud as an articling student and do the supervision for him.*" [Hearing Transcript page 64, line 26 to page 65 line 1]. Mr. [NB] met the Member sometime in mid-April 2010. It was explained to him that the Member needed two months to complete his articles. The Member mentioned to Mr. [NB] that he had failed one of the modules for CPLED, and had to retake it which was the reason that he could not be called and needed an additional 2 months.

Mr. [NB] agreed to take on the Member as a student and completed an Undertaking to this effect [Exhibit 43]. Mr. [NB] understood that the Member would be working at Mr. [SR]'s offices on files there, but because Mr. [SR] was unable to provide the Undertaking that Mr. [NB] would do it. Mr. [NB] indicated that he arranged to meet with the Member every week. Initially the arrangement was that the Member would bring his files to Mr. [NB]'s offices, and later they agreed to meet 3 or 4 times per week, which occurred when the Member would come downtown for Court and they would meet for coffee and discuss the files. This arrangement took place for only a week or two before Mr. [NB] was contacted by a LSA Investigator and everything ceased.

Mr. [NB] withdrew his Undertaking in a fax dated June 1, 2010 to the LSA [Exhibit 44] after a LSA investigator attended at Mr. [NB]'s offices with a Private and Confidential letter for the Member. Mr. [NB] met with the Member to give him the letter and find out what it said.

Mr. [NB] had been previously told by the Member that he had an argument with a CPLED staff person and had sworn at them. Mr. [NB] was not aware that the Member had been suspended from CPLED. Mr. [NB]'s understanding was that the Member had failed a negotiations module and would be re-taking the exam. At some point, Mr. [NB] had asked the Member how his final exam went and was told it went well.

Under cross-examination, Mr. [NB] confirmed that he had known the Member for approximately one month. The Member's student card was issued in the beginning of May 2010 and they began working together for two weeks until the relationship ended. Mr. [NB] agreed with the paragraph in his fax to the Law Society [Exhibit 44]: "*I was informed telephonically by Mr. [SR] on Friday, May 28, 2010, that Mr. Hammoud is resigning from as I understood, me being his principal supervisor",* but believes he had also told Mr. Hammoud that he was not prepared to continue. Who made the decision first, Mr. [NB] could not remember.

In re-direct Mr. [NB] indicated that he felt in retrospect that the Member had not been candid with him and that he had been misled.

Information provided by the Member to LSA Investigators respecting arrangements with Mr. [NB].

The Member was interviewed by LSA Investigators, [RE] and [DD] on July 23, 2010 in relation to the arrangements with Mr. [NB]. [Exhibit 23]

To the Member's understanding, Mr. [SR] had approached Mr. [NB] to take the Member under supervision as a favor:"*…so we could position ourselves, so that in the future if they needed my services, I have status with the law society.*

If for example, [SR] or [NB], they need somebody to run to the Courthouse to adjourn a matter or to argue a matter, which they can't make it for that day, I'm there. You know I have status. They're basing this you know, matter this -- go to the court house to do this. That was the sort of prospective thing. You know what I mean. As for compensation, no. I never received nothing from [NB], nothing from [SR]. It was never really actually set up. You know it was never actually in place. It was like a prospective thing if they got busy enough. They could –

Like [SR] they're cheap. They don't want to pay anybody. That's what it comes to. They want you to come and work experience yeah, come on down. Sit here all day. But when it comes down to paying these lawyers, they don't want to hire people.

And --but as for the disclosure with [NB], I never asked him for the position. It was strictly Mr. [SR]. [NB] became concerned after I think you had paid him a visit to this office, and once you paid that visit, he became concerned --not became concerned because of the allegations against me, the Law Society. He became concerned because he was trying to cover his own butt. You think he may have done something wrong, so now he's in that mode. He said, okay, how we cover this up. You know okay, let's meet frequently.

I'm like there's nothing to hide. What are you talking about. Nothing has been done here, you know. Just you agreed to do this undertaking just for you to have status in case, you know there's certain requirements that -- certain obligations I have as a principal. I said gladly, you know. And I -- at that point in time, he asked me for disclosure and I gave him disclosure. I told him, listen. The complaints are this, this and that. There's 2 complaints against me based on two telephone conversations with L.E.S.A.'s staff.

I didn't get into all the details because I didn't think it was going to make any difference at that time, you know, and right after that I said, you know what. I'm going to resign. I'll make it easy for you because I could see he was concerned. He was concerned again just to cover his own butt. He thought maybe he did something that violated some sort of Law Society policy, so I said, [NB], I'll make it easy for you. I'll-- that's it. I'll just end it. Inform the Law Society that there's no longer a working arrangement, simple as that. And that's what precisely what we did," [Exhibit 23, page 120 line 2 to page 121 line 24].

Findings: The citation has been proven. The Hearing Committee finds that the Member misled Mr. [NB] as to his status with CPLED and that it is conduct deserving of sanction.

Mr. [NB] agreed to take on the role of supervisor. He was not informed when doing so, that the Member had been terminated from the CPLED program and was not in a position to take the failed negotiations examination. The Member did mislead Mr. [NB] who was not informed that the Member had been suspended from CPLED. The Member also told Mr. [NB] that he was going to be re-doing the 9th Module and told the Mr. [NB] that he had passed the exam. The Member also did not inform Mr. [NB] that he had any issues with the LSA and Mr. [NB] did not become aware of this through the Member.

The Hearing Committee does not accept that the Member had no knowledge of Mr. [NB]'s application to become his supervisor.

The evidence supports the following scenario:

1. That the Member had initially hoped to obtain an article with Mr. [SR];

2. That it had been suggested to him strongly by Ms. [AG] that he find a different person to supervise him;

3. That Mr. [SR] had approached Mr. [NB] to be a figurehead supervisor or principal for the Member. The intention was for the Member to work out of Mr. [SR]'s offices not Mr. [NB]'s;

4. Mr. [NB] signed documents with the LSA that led the LSA to believe that the Member would be working at Mr. [NB]'s office.

5. When the LSA Investigator attended at [S] with a letter directed to the Member expecting him to be at that address, Mr. [NB] became worried. He contacted Mr. [SR] and the Member immediately, the letter from the LSA was opened and some new facts were disclosed to him by the Member;

6. Mr. [NB] became uncomfortable with the situation. The Member offered to withdraw as a student under the arrangement and Mr. [NB] decided to terminate the arrangement.

It seems highly unlikely that there was much supervision of the Member by Mr. [NB]. Mr. [NB] gave evidence to suggest that there were meetings at the Courthouse and discussions about files. The Member suggested otherwise. The entire relationship in any event lasted less than one month.

It appears to the Hearing Committee that Mr. [NB] and Mr. [SR] were attempting to mislead the LSA with respect to the nature of the arrangements made with the Member for a supervised position. The Panel takes note of the contents of the Undertaking signed by Mr. [NB]. Specifically it states: "*Pursuant to Rule 52(4) of the Rules of the Law Society of Alberta, I [NB] undertake to supervise Ayyman Hammoud and to ensure that all services provided by him under Rule 52(3) with [S] are performed under my direct supervision and in compliance with the Rules of the Law Society of Alberta from April 29, 2010 until June 30, 2010".* This Undertaking was signed by Mr. [NB] on April 29, 2011 [sic].

Mr. [NB]'s Undertaking does not reflect the actual circumstances of the matter in two respects: firstly, it states that the Member's services will be provided with Mr. [NB]'s law firm and, secondly, that they will be performed under Mr. [NB]'s direct supervision and in compliance with the Rules of the LSA. Clearly that did not occur.

It is very disturbing to the Hearing Committee that two Members of the LSA arranged for the Member to enter into a fraudulent supervisory arrangement. For the Member to involve himself in this type of fraudulent and misleading arrangement is highly improper. It appears that the Member, when desperate or under pressure, makes extremely poor decisions. This is consistent with a pattern of behavior on the Member's part that was evident to the Hearing Committee.

Citation "4"

4. IT IS ALLEGED that the student failed to comply with the Rules of the Law Society and that such conduct is conduct deserving of sanction;

Issues:

a. Did the student fail to comply with Rule 105 of the Rules of the LSA??

b. Is that conduct, conduct deserving of Sanction?

Applicable Law:

The Rules of the LSA states as follows:

Reporting Offences

"105 (1) *A member, student-at-law, applicant for admission or re-admission, or a visiting lawyer who is charged with any of the following:*

(a) an indictable offence under any Act of the Parliament of Canada;

(b) an offence under any Act of the Parliament of Canada where the offence was prosecutable either as an indictable offence or as a summary conviction offence;

(c) a summary conviction offence under the Income Tax Act, the Criminal Code, the Narcotic Control Act or the Controlled Drugs and Substances Act, the Food and Drugs Act of Canada or the personal or corporate tax legislation of any province or territory in Canada, including any regulation or regulatory instrument made pursuant to such legislation;

(d) a summary conviction offence under any other law in force in Canada punishable by a fine, if the maximum fine for the offence was then at least $25,000;

(d.1) contravening any provision of the Securities Act (Alberta) or analogous legislation in any province or territory in Canada, including any regulation or regulatory instrument made pursuant to such legislation;

(e) an offence committed outside Canada and similar to any of the kinds of offences described in clauses (a) to (d.1);

(f) a regulatory offence in any jurisdiction in which the individual is subject to the regulation of any regulatory body, including the legal profession;

shall within a reasonable time after the charge is laid or the investigation commences, give a written notice to the Executive Director containing the particulars of the charge or investigation, and forthwith notify the Executive Director of the disposition of the charge or investigation and any agreement arising out of the charge or investigation. "

Positions:

It is the position of LSA Counsel that the Member failed to comply with Rule 105 of the Rules of the LSA and that such conduct is deserving of sanction.

It is the Member's position that he did not know about Rule 105 and that he reported charges to the LSA once he did learn of it.

Evidence:

The evidence in relation to this citation was provided in the Transcript of Interviews of the Member by LSA Investigators and has been reviewed above.

Findings:

The Hearing Committee finds that the Member failed to comply with Rule 105 of the LSA and that such conduct is deserving of sanction. This is a self-governing profession governed by the *Legal Profession Act*, the Code of Professional Conduct and the Rules of the LSA. All members of the LSA are presumed to be familiar with the above regulatory requirements and make the necessary inquiries to become informed. A student at law is reasonably expected to know the Rules of the LSA. The Member in 2009 and 2010 was charged with nine very serious criminal charges. It is not plausible to the Hearing Committee that the Member could reasonably have believed, under the circumstances, that there was no need to report the charges to the LSA.

Other Evidence called at Hearing:

Evidence of [TD]

Mr. [TD] was called by the Member who current works in a supervised arrangement with Mr. [TD].

Mr. [TD] has had no cause for concern in respect of the Member's dealing with other persons at the firm, including clients and it has been a good working relationship.

Mr. [TD] recognized that the Member had not gone through the normal channels that most people go through from law school directly to articles, he has lacked some comradeship as a result and his development as a potential lawyer has been delayed

by being out of the mainstream. Mr. [TD] saw changes over the two years that the Member had been with him and that he was improving his personal skills quite a bit. Mr. [TD] had received no complaints from clients with respect to the Member other than a small incident with a female staff member that was rectified by the two persons talking things out.

Mr. [TD] was in attendance at the Hearing to support the Member's intentions to become a Member of the Law Society and felt that he would be a worthwhile addition.

When cross-examined as to his understanding as to why the Member's call had been delayed, Mr. [TD] advised that he understood there had been issues for the Member as a young adult and a charge he had to deal with and that there was some ongoing conflict as a result of something that went on with his parents that was also a concern. With respect to the gaps between when the Member was in law school and when he met with Mr. [TD], Mr. [TD] did not particularly inquire. He was aware that he had articles before but did not really look into that.

Mr. [TD] appears to have been somewhat aware of the assault on Professor P. but did not receive full details and did not inquire too much. Mr. [TD] stated:

"by my understanding, it wasn't a situation where he'd gotten a beating or anything of that sort. It was an assault, and it had – it had been dealt with by some kind of a plea and –

Q. Do you remember anything about what he told you about the assault?

A. He didn't tell me who was involved in the assault, and I didn't particularly inquire. I looked at it as being something which was far back enough in his history that it just was part of what helped him develop, I guess, into who he is and where he is."

At Transcript page 562 lines 27 to page 563 lines 10, the following exchange took place:

"Q. Ok did he tell you that he was suspended from the Bar admission program?

A. I didn't know that he was suspended from the Bar admission program particularly
--- I knew that his – his call to the Bar was being delayed. Articles was something he could do in the meantime and continue. I knew there was investigations going on as far as the Law Society looking into his background and his suitability. But as far as the full length and breadth of those investigations, I had a letter that I received from somebody at the Law Society alerting me to certain aspects of these. And I remember reading the letter and talking to him about it, but I didn't have any special concerns about it.

Q. Ok were you aware when Mr. Hammoud began working with you, that he was bound by two separate criminal recognizances? He was released on bail for two different sets of charges?

A. He was under recognizance at that point in time?

Q. Yeah

A. No I wasn't aware of that

Q. Ok

A. And I knew he was actively dealing with a matter in relation to his parent.

Q. Right

A. that's what I was aware of.

Q. Ok but did he tell you anything about being arrested as a passenger in a motor vehicle where drugs were found?

A. No

Q. Ok had you known some of the things that I have alluded to this morning, would your assessment of his character been any different?

A. I've come to know of these things over time, but it in no –particularly then I made whatever inquiries I had at that time. But I have since become aware of them but I have also become aware of him? Right answer and so they haven't disturbed me or shaken my confidence in Ayyman."

Mr. [TD] was extremely supportive of the Member. The working relationship between he and the Member, as well as the relationship between the Member and others in his office, is positive and productive. Mr. [TD] made is clear that he wanted to see the Member achieve his ambition to become a lawyer, that he fit well into the offices and would be welcome to remain there. If the LSA put conditions upon the Member Mr. [TD] would accommodate this.

The following exchange of note took place between Mr. [TD] and one of the Panel Members [page 580 lines 16 to 26]:

Q. Did Mr. Hammoud tell you when he became subject to charges in relation to drug-related offences?

A. I did not know anything about any drug-related offences.

Q. Okay. When did you learn about those?

A. the drug-related offence I didn't know anything about till today.

Q. Till today? When the questions were asked of you?

A. When I was outside, before I came in here, Ayyman told me that I might hear something about them. I had never heard about it before."

A further exchange occurred between Panel Members and Mr. [TD] as follows [Hearing Transcript page 582 lines 14 to Transcript page 583 line 14]

"Q. in your discussions with Mr. Hammoud, were you – did you become aware that he and been suspended from the CPLED programme?

A. The what programme?

Q. CPLED. The requirement –

THE CHAIR: Bar Admission. Bar Admission course.

Mr. JACQUES: oh, I'm sorry.

THE CHAIR: no, no, you are not wrong. But I think what Mr. [TD] –

A. It was a bar admission course when I did it.

THE CHAIR: It was the bar admission course. It's become CPLED.

Q. Mr. JACQUES: Oh Okay, Sorry.

A. It was the bar admission when I did it.

Q. Were you aware of that?

A. No.

MR. JACQUES: Okay. That's all my questions.

Ms. Kirker Questions the Witness:

Q. When did you become aware that Mr. Hammoud had been suspended from the bar admission course?

A. I wasn't really – I never really particularly addressed it that he was suspended from the bar admission course.

Q. So you didn't know that until today?

A. I don't think I – really impacted on my brain until today.

The following exchange occurred when the Member examined Mr. [TD] in re-direct [transcript page 588 line 21 to page 589 line 18]:

Q. I just have one question, Mr. [TD] that arises from my friend's questions. Actually, from the Panel's questions.

With respect to the CPLED, do you recall me advising you that I had one examination that was still outstanding?

A. I knew there was some things that were still outstanding.

Q. Do you recall –

A. You told me.

Q. Yes. I know – I realize I'm testing your memory here. But do you recall me advising that I was prevented from completing that final examination?

A. I recall something of that nature being discussed, being prevented. But I didn't understand it to be equivalent to being terminated from the – or being suspended from the programme. I didn't interpret one as being equivalent to the other.

For some reason I – I knew that you had some things that you had yet to complete that you weren't able to complete or you weren't going to be able to complete until something else got done, but I didn't take that as being equivalent to suspension. Maybe it's the same thing.

Q. I'm going to suggest it is the same thing."

Mr. [TD] was called as the Member's witness. The Member was not candid with Mr. [TD] in a number of respects and did not chose to provide Mr. [TD] with information that he ought to have provided to him considering that Mr. [TD] had taken on the role of supervising lawyer to the Member.

Mr. [TD] did not understand that the Member to have been suspended from CPLED. The first time Mr. [TD] heard that the Member had been charged with drug-related offences was just before he entered the Hearing room on April 26, 2012.

VI. Evidentiary and Procedural Matters

1. Should the documentary evidence which came both from the University of Calgary and from Mr. [C]'s file be received as evidence at the Hearing? Does

solicitor/client privilege attach to all of those materials because one source from which they came to the LSA was the Member's criminal lawyer's file?

Should Dr. P. be allowed give evidence when information about his existence was contained (amongst other places) in the Member's criminal lawyer's file?

Applicable Law:

Section 55 of the *Legal Profession Act* directs that: "*An investigation can be conducted by an officer or employee of the Society or by a person engaged by or on behalf of the Society for that purpose."*

Section 55(2) of the *Legal Profession Act* provides that: "*An investigator may direct the member concerned or any other member to answer any enquiries the investigator may have in relation to the investigation; to produce to the investigator any records or other property in the member's possession or under the member's control that are or may be related in any way to the investigation; and to give up possession of any record referred to in clause (b) above for the purpose of allowing the investigators to take it away, make a copy of it and return it within a reasonable period of time after receiving it, or; to attend before the investigator in order to comply with the previous three subparagraphs, (a), (b), and (c). "*

Section 112(1) of the *Legal Profession Act* states that:

"A member may not in any proceedings under part 3 or 4 refuse to give evidence, answer any records or other property on the ground of solicitor and client privilege if the evidence, enquiry, records or other property is material to the proceedings. "

Section 112(2) of the *Legal Profession Act* provides that:

"If a member is required under subsection (1) to give evidence, answer enquiries or produce or make available any records or other property pursuant to subsection (1) and the member may claim solicitor and client privilege in respect of the evidence, answers, records or other property, the member or any other person who may claim the solicitor and client privilege may require that

(a) all or part of any proceedings under Part 3 or 4 in which the evidence, answers, records or other property is dealt with be held in private and

(b) the public be refused access to the records and other property and to any other document containing the evidence or answer."

Section 68 (1) of the Legal Profession Act states that:

"68(1) In proceedings under this Division, a Hearing Committee, the Practice Review Committee or the Appeal Committee

(a) may hear, receive and examine evidence in any manner it considers proper, and

(b) is not bound by any rules of law concerning evidence in judicial proceedings.

Positions:

The Member brought an application to exclude Exhibits 32-24 and the viva voce evidence of Dr. P. He argued that any and all information related to the 2002 assault and his conviction ought to be excluded as "fruit of the poisoned tree" due to Mr. [C], the Member's criminal lawyer, turning over his file that contained the above Exhibits to the LSA at their request pursuant to section 55 of the *Legal Profession Act.* The file also disclosed the existence of Dr.P.

At a pre-hearing conference on April 16, 2012, the Member had consented to the contents of a proposed Exhibit Binder except for proposed Exhibits 26, 27, 29 and 30. The Panel received and reviewed the Exhibit Binder by consent of LSA Counsel and the Member with those Exhibits removed.

On the first day of the hearing, the Member, in response to the standard enquiry from the Panel confirming his consent to enter the Exhibit Binder, advised that he objected to Exhibit 31, a victim impact statement of Dr. A. P.. It was then removed from the Exhibit Binder with consent of LSA Counsel.

The Member then informed the Panel that he did not agree to inclusion of Exhibits 32, 33 and 34 on the basis of solicitor/client privilege.

The Exhibit Binder included the following:

Exhibit 32: The decision of Dean [PH], Faculty of Law dated January 14, 2002: "In the matter of the suspension of Ayyman Hammoud.

Exhibit 33: "Report of the General Faculties Counsel Committee to Review the Decision of [PH], Dean, Faculty of Law to Temporarily Suspend for Non-Academic Misconduct" dated February 15, 2002.

Exhibit 34: The Member's Petition to the Board of Governors of the University of Calgary dated April 15, 2002,

Aside from the issue of solicitor/client privilege, the Member argued that the evidence had no relevance to the complaints or the citations before this Hearing Committee and that its value was more prejudicial than probative.

The Member asked that Dr. P.'s evidence be excluded as directly relating to the breach of solicitor/client privilege and questioned its relevance. The Member asked the Hearing Committee to accept his evidence as to the facts of the assault and his candor in relation to same.

The member acknowledged that in applying for admission as a student-at-law, he had authorized the LSA to make enquiries pursuant to section 24 of the Form 2-1 application for admission.

LSA counsel argued that in order to determine the question of the Member`s candor to the LSA, the Hearing Committee must hear all of the evidence, weigh it and make its own determination about what occurred in connection with Dr. P.; assess whether the Member's disclosure of facts in relation to that incident in his communications with the LSA were candid and whether the Member could have had a reasonably held belief that his version of events as provided to the LSA in 2006, 2008, and in 2010 to the Investigators was true. LSA Counsel acknowledged that some of the materials were less relevant than others.

The LSA argued that Dr. P.'s evidence is the best available evidence the Hearing Committee can look to, to resolve the factual discrepancy and make a decision on the evidence before it.LSA Counsel advised that although the Member`s argument was that because the information about Dr., P. came from Mr. [C]`s file, that the information about Dr P. had come to the LSA by way of a request to the University of Calgary before Mr. [C]'s materials were received, and that the Member had signed the necessary consent.

Counsel for the LSA indicated that although she could not provide the Hearing Committee with the date on which the material was received, that the University of Calgary sent the LSA : the campus security file, an incident report from campus security, the decision of Dean [PH] referred to above as Exhibit 32, an email dated 2002, the transcripts of marks of Mr. Hammoud; the document referred to as Exhibit 33; the report of General Faculties Council Committee, and Exhibit 34, the Petition to the Board of Directors of the University of Calgary.

The LSA sent letters of request on July 8 and 29, 2010 to Mr. [C], the Member's criminal lawyer, who replied under cover of a letter dated August 27, 2010, and included as attachments, amongst other things: a copy of Crown disclosure, a copy of a presentence report, a copy of a psychiatric assessment, a copy of what was described in the letter as "disciplinary hearings from the University of Calgary", and a copy of the criminal information [Exhibit 46]. Also in the materials from Mr. [C] to the LSA was a letter dated March 7, 2003 to the Member from his lawyer providing information in

relation to a March 3, 2003 court appearance. The psychiatric assessment was not included in the Exhibit Binder,

The Panel heard argument from the LSA Counsel l and the Member as to the meaning of section 112(1) of the *Legal Profession Act.*

The Member urged a narrow interpretation of section 112(1), and argued that it only applies where the client whose privilege is to be protected is not a member of the LSA under investigation.

Counsel for the LSA argued that section 112(1) is to be more broadly interpreted, that the language is clear and captures any situation where a Member is asked to provide information in the context of a Part 3 investigation, and that a Member is prohibited from refusing to give evidence, answer enquiries, produce records if they are material to the proceedings.

LSA Counsel argued that section 112(2) is the manner in which the breach of solicitor/client privilege is mitigated, and that section 112(2) is the remedy.

Findings:

The Legal Profession Act grants the Hearing Committee broad discretionary powers over evidence, allowing it to hear, receive, and examine evidence in any manner it considers proper without being bound by any other evidentiary rules.

Although the Hearing Committee is not bound by any evidentiary rules it is still bound by the administrative law requirements of natural justice, and procedural fairness.

In Dunsmuir v R., [2008] 1 SCR 190 at paragraph 79 Justices Bastarache and LeBel state:

"[79] Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many times, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (Knight, at p. 682; Baker, at para. 21; Moreau-Bérubé v. New Brunswick (Judicial Council), 2002 SCC 11 (CanLII), [2002] 1 S.C.R. 249, 2002 SCC 11, at paras. 74-75). "

With respect to the information provided by Mr. [C] to the LSA, the Panel finds that the obligation of the Member under section 112(1) of the *Legal Profession Act* should be interpreted as the words of the section clearly provide for. Mr. [C] is the Member who

was asked to provide his file. Mr. Hammoud is a Member as well, and is required to make available his records. Neither can refuse to comply with 112(1) if the evidence is material to the proceedings.

The Panel's decision is that section 112(1) applied to Mr. [C], who was required to provide the information requested of him by the LSA investigators when asked.

The manner in which solicitor/client privilege information is then protected by the regulator is pursuant to section 112(2). Section 112(2) does not allow a Member to refuse to provide documents or information on the basis of privilege. It does permit the Member (Mr. [C]), or anyone else (Mr. Hammoud), to claim solicitor/client privilege and apply to have the matter heard in private, and request that the public be refused access to the documents.

The Hearing Committee also finds that the University documents Exhibits 32, 33 and 34 came from a separate source, by way of a separate request not related to Mr. [C]'s production, and are not subject to solicitor-client privilege in any event.

With respect to whether the documents in question are relevant to these proceedings, the issue of credibility and factual accuracy arose initially due to the Member's responses to the complaints of CPLED staff.

The Member in a March 16, 2010, letter to the LSA stated the following in paragraph 2:

To the Member's understanding, Mr. [SR] had approached Mr. [NB] to take the Member under supervision as a favor:*"…so we could position ourselves, so that in the future if they needed my services, I have status with the law society.*

If for example, [SR] or [NB], they need somebody to run to the Courthouse to adjourn a matter or to argue a matter, which they can't make it for that day, I'm there. You know I have status. They're basing this you know, matter this -- go to the court house to do this. That was the sort of prospective thing. You know what I mean. As for compensation, no. I never received nothing from [NB], nothing from [SR]. It was never really actually set up. You know it was never actually in place. It was like a prospective thing if they got busy enough. They could –

Like [SR] they're cheap. They don't want to pay anybody. That's what it comes to. They want you to come and work experience yeah, come on down. Sit here all day. But when it comes down to paying these lawyers, they don't want to hire people.

And --but as for the disclosure with [NB], I never asked him for the position. It was strictly Mr. [SR]. [NB] became concerned after I think you had paid him a visit to this office, and once you paid that visit, he became concerned --not became concerned because of the allegations against me, the Law Society. He became concerned

because he was trying to cover his own butt. You think he may have done something wrong, so now he's in that mode. He said, okay, how we cover this up. You know okay, let's meet frequently.

I'm like there's nothing to hide. What are you talking about. Nothing has been done here, you know. Just you agreed to do this undertaking just for you to have status in case, you know there's certain requirements that -- certain obligations I have as a principal. I said gladly, you know. And I -- at that point in time, he asked me for disclosure and I gave him disclosure. I told him, listen. The complaints are this, this and that. There's 2 complaints against me based on two telephone conversations with L.E.S.A.'s staff.

I didn't get into all the details because I didn't think it was going to make any difference at that time, you know, and right after that I said, you know what. I'm going to resign. I'll make it easy for you because I could see he was concerned. He was concerned again just to cover his own butt. He thought maybe he did something that violated some sort of Law Society policy, so I said, [NB], I'll make it easy for you. I'll-- that's it. I'll just end it. Inform the Law Society that there's no longer a working arrangement, simple as that. And that's what precisely what we did," [Exhibit 23, page 120 line 2 to page 121 line 24].

Then at Exhibit 13, in relation to the complaint of Ms. [PG], also an employee of the Legal Education Society of Alberta, wherein she complains of the Member's communications to her, the Member indicated to the LSA that Ms [PG] became agitated and offended, was impatient, finally hung up on him and that he:

"… contemplated reporting to Mr. [PW] what I believed to be inappropriate and rude contact on the part of Ms. [PG]. "

There were two very different versions of events provided to the LSA Society by the complainants and by the Member. The Investigators in interviewing the Member, and in trying to evaluate the credibility of the Member and the complainants, made inquiries, and were not satisfied with some of the answers they received from the Member.

That information provided from other sources during the investigation, together with the Member's responses, led the LSA to assert its own subsequent complaint that the Member had failed to be candid with them. This citation requires a decision by the Hearing Committee as to whether or not the Member failed to be candid with the LSA; and if so, whether that conduct is deserving of sanction.

The Member's assertions about the facts relating to this incident as provided to the LSA at various times, his candor in this regard, his assertion that certain admissions of fact in the criminal proceedings were unknown to him or were made without his knowledge and contrary to his consent and were not true as he believes it, require the Hearing

Committee to make its own assessment as to what happened, what the Member knew or ought to have known at the time, and processes and communications he was involved in.

The Hearing Committee believes that the disputed Exhibits are relevant and material to resolving the discrepancy the Hearing Committee must assess.

The Member was invited to make an application to have the hearing heard in private and request that the public be refused access to the documents but declined.

With respect to Dr. P., the Hearing Committee found there is no solicitor/ client privilege issue respecting his evidence.

The Hearing Committee needed to hear from Dr. P. who was the only other person present during the 2002 incident and it is the best evidence. The Hearing Committee was prepared to hear from Dr. P. about the details of the incident, what physical injuries were inflicted and how they were treated. With those limitations the Hearing Committee believed that the probative value of Dr. P.'s evidence is not outweighed by any prejudice.

Apprehension of Bias on Part of Hearing Committee Member

The Member applied to have this Hearing Committee recused or terminated on the basis of apprehension of bias.

Before the hearing adjourned on Wednesday, April 25th and prior to any testimony by Dr. P., Ms. Kirker, one of the Panel members, advised LSA Counsel and the Member that she believed that she might know Dr. P. Ms. Kirker stated [Hearing Transcript page 479 lines 10-22]:

"A number of years ago, for a short period of time, I had a neighbor by the name of A. P. who taught at the university. I don't know until I see Mr. P. if he is that neighbor. We did not socialize with one another. [We were] acquainted on the street: Hello. How are you? Beautiful weather. I wanted to disclose it. The neighbor I had moved out of the neighborhood a number of years ago. I haven't seen him since.

I don't believe it gives rise to bias or should give rise to any apprehension of bias, but I wanted both counsel to be aware of it so that you might address it if there was a concern."

This was followed with a question from the Member in relation to whether or not they were actual next-door neighbors, and Ms. Kirker indicated that Dr. P. resided two doors down and around the corner.

LSA Counsel l and the Member were invited to consider the matter overnight. On April 26, 2012 the Member indicated that he had consulted with counsel, and it was his position that the hearing should be terminated and a new Hearing Committee scheduled because, in his submission, there was a clear apprehension of bias, if not actual bias, on the part of Ms. Kirker as a result of her having been a neighbor of Dr. P.

The Member indicated that he lacked all of the facts about Ms. Kirker's past interaction with Dr. P., but asserted that the facts as disclosed were sufficient to taint the proceedings and call the administration of justice into disrepute.

The Hearing Committee asked LSA counsel and the Member to consider a process whereby Dr. P. could be sworn in and questioned solely on his past interactions with Ms. Kirker, so that all parties could be satisfied they understood this before the Hearing Committee heard argument on the legal test for apprehension of bias; and to specifically to address the Member's concern about the fact that he lacked some information.

The Hearing adjourned for both parties to consider this proposal. Upon return, the Member indicated that, on the advice of counsel, he did not agree to the proposal. He maintained his position that on the basis of the disclosure provided by Ms. Kirker, an apprehension of bias existed that required the proceedings to terminate. LSA Counsel advised that she would have been agreeable to the process.

The test for bias is as set out in the Alberta Court of Appeal case *Boardwalk Reit LLP v Edmonton* (City) [2008]. Paragraph 4, at page 3 of the decision provides as follows:

"The Supreme Court restated the test for recusal of a judge on the bias of reasonable apprehension of bias in Wewaykum Indian Band v Canada [2003] 2 S.C.R. 259, 2003 SCC 45 at paragraph 74:

What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think it more likely than not that the judge, whether consciously or unconsciously, would not decide fairly? Whether there is a reasonable apprehension of bias is to be assessed from the point of view of a reasonable, fair minded and informed person. The Court emphasized several fundamental principles, one of which is particularly relevant: an apprehension of bias must rest on serious grounds, in light of the strong presumption of judicial impartiality. The presumption carries considerable weight, and the law should not carelessly evoke the possibility of bias. "

and at paragraph 29:

"To have any legal effects, an apprehension of bias must be reasonable, and the grounds must be serious, and substantial. Real likelihood or probability is necessary,

not a mere suspicion. R v R.D.S. [1997] 3 S.C.R. 484, 532 (para 112). The threshold is high: id at 532 (para. 113). The test of appearance to a reasonable neutral observer does not include the very sensitive or scrupulous conscience: see Wewaykum Indian Band v R., supra (par 22). This challenge is, quote, "favour", not interest, says British Columbia Court of Appeal in G.W.L. Prop v W.R. Grace, supra. No reported case disqualifies a judge because of friendship, says the British Columbia Court of Appeal in Wellesley L. Trophy Lodge v BLD Silviculture, supra. "

The decision of the Hearing Committee is that the test for apprehension of bias has not been met. There is no reason to disqualify either Ms. Kirker or this Hearing Committee.

VII. Conclusions:

The Hearing Committee has found sufficient evidence on the balance of probabilities that that the Member had engaged in conduct deserving of sanction in relation to Citations 1,2, 3,and 4.

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

DATED this 13 day of December, 2012 at the City of Calgary in the Province of Alberta.

Per: _____

SARAH KING D'SOUZA, Q.C.

Committee Chair

Per: _____

ANNE KIRKER, Q.C.

Committee Member

Per: _____

WAYNE JACQUES, CA

Committee Member