

**THE LAW SOCIETY OF ALBERTA**  
**HEARING COMMITTEE REPORT**  
**IN THE MATTER OF THE LEGAL PROFESSION ACT,**  
**AND THE MATTER OF A HEARING**  
**REGARDING THE CONDUCT OF**  
**AYMAN HAMMOUD**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**SANCTION PHASE REPORT**

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## **Hearing Committee (the “Committee”)**

Sarah King-D’Souza, Q.C. – Chair

Anne Kirker, Q.C. – Committee Member

Wayne Jacques, CA – Committee Member

### **Counsel Appearances:**

Garner Groome – For the LSA

**Hearing Date:** January 21, 2013

**Hearing Location:** 500, 919 11<sup>th</sup> Avenue SW, Calgary, AB

## **I. INTRODUCTION**

This matter was heard by a Committee in relation to the Member who faced 4 citations.

The Committee 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 as follows:

## **CITATION 1.**

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

### **Findings:**

#### **CPLED Incidents**

The Committee found 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.

#### **Incident of January 17, 2010**

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

## **CITATION 2.**

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

### **Findings:**

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

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

**Candour in relation to the Member's interviews with the LSA Investigators regarding (a) the incident with Dr. P., (b) an incident that he had with his principal [JI] (c) any criminal charges he had, and (d) his supervised position with Mr. [NB].**

The Committee found 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.

The Committee found 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 Committee found 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 Committee found 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.

### **CITATION 3.**

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

### **Findings**

The Committee found that the Member misled Mr. [NB] as to his status with CPLED and that it is conduct deserving of sanction.

#### **CITATION 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;**

#### **Findings:**

The Committee found that the Member failed to comply with Rule 105 of the LSA and that such conduct is deserving of sanction.

#### **II. SANCTION REQUESTED BY THE LAW SOCIETY**

The Law Society sought termination of the Member's registration and Costs.

To complete the Exhibit record, the Member's Disciplinary Record was entered as Exhibit 58. The Member has no disciplinary record. The Estimated Statement of Costs was entered as Exhibit 59.

#### **III. EVIDENCE IN RELATION TO SANCTION**

The Member called [TD] his supervising lawyer. Mr. [TD] recognized that the Member had dealt with various past events in a silly and juvenile way but felt he was unlikely to react in that way now. Mr. [TD] had been able to reconcile in his own mind why the Member had reacted in the past, the Member's frame of reference at those times, the person the Member was now, and was supportive of the Member.

The Member also gave evidence. The Member expressed remorse and acknowledged that admitting to mistakes was a problem for him in the past. At Transcript page 847 lines 1-3 the Member stated:

*"I mean, you know, I've made adjustments along the way, and I'm more inclined to make admissions in that regard than I was before." [underline added.]*

He had benefited from therapy with Mr. M. which he continued with for 14 months even after it had been deemed unnecessary by the therapist for him to continue and he had taken one half of the [...] anger management program last year. The Member found Mr. [TD] a good mentor.

When asked whether he accepted the findings of the Committee, the Member responded at Transcript page 850, lines 16 to 24:

*Answer: “You know, I disagree with some of the findings, but as a whole, I accept the fact that .. that the Panel has come .. has determined that some .. you know, that the conduct .. some of the conduct was deserving of sanction. I accept that. I do.*

*Like I said earlier, you know, I’m remorseful, and looking back, you know, I’d love to go back and take .. take some of that stuff back. Of course that’s not possible. But generally speaking, yes.” [Underline added.]*

The Member advised that he had discussed with Mr. M. his overreaction in many situations where he perceived persecution where it was not there. At Transcript page 851 at lines 14-21 the Member stated:

*“There’s been numerous sessions where that’s been explored. And, you know, in my discussion with Mr. M., you know, it’s come to my attention that , you know, there’s no doubt about it, I’ve overreacted in many situations. There’s probably many situations where I’ve perceived persecution where its—where –where it just wasn’t there. And I’m sure there’s situations where I perceived persecution where in fact it was there.” [Underline added]*

The Member felt that he had come a long way in the past two years as to how he dealt with others.

With respect to the issue of integrity the Member explained that in terms of the findings of the Committee that he had misled the Law Society, it had not been deliberate or willful. The Member indicated that he had complied with Ms. [AG]’s recommendation at

the time that he first began with Mr. [TD], that he had authorized the Law Society to send a letter to Mr. [TD] advising of the complaints that were pending.

The Member indicated that following the Dr. P. incident he had returned to law school two years later and then tried to secure articles. At Transcript page 855 lines 6-23 the Member stated:

*"... And there was difficulty doing that because each time I would – I would apply to an employer – any time an employer took an interest in me, you know, I would – I would disclose to them the history, and usually that resulted in – in them changing their mind in terms of, you know, hiring me. So kind of, you know – and that lasted for a few years, and so along the way, I disclosed less. And along the way, I realized I was under no obligation to disclose certain things, so I disclosed less. But nevertheless I felt that I was – you know, I felt that I was – I wasn't misleading.*

*And with respect to the Law Society itself, when I made my application as a student, the version of facts that I presented to the Law Society in my application, those were the version – that was the version of defence [sic] that I – I – I remembered. That was my version. That was the version I had – you know, that is what I had remembered had transpired".*

The Member indicated that integrity was very important to him and he was honest in his dealings with other lawyers and with clients.

When asked whether there were other findings of the Committee that he disagreed with the Member advised that he completely disagreed about the incident with Mr. [JI] and the event was fabricated. The Member stated at Transcript page 858 Lines 13-14 when asked which findings he disagreed with: *"Most notably that's the one that jumps out at me, the Mr. [JI] issue, most notably."*

At Transcript page 858 lines 15-26 the Member also stated:

*" In terms of the Law Society application citation, I mean, I just – my explanation that I provided to Madam Kirker, that's the explanation I stand by. Like I said, if there was – if in fact somebody or more than one person was misled by me, again, it wasn't deliberate. It wasn't – it wasn't willful. It was by no means intentional. It wasn't like I – I*



*calculated to mislead or to do this or to do that. It's just, you know, trying to move ahead with my life, and through the process I got involved with certain people and for some greed and mostly rundown and that was probably not the best place for me to be after I completed my articling year. "*

The Member did acknowledge under cross examination that he had withdrawn his consent for the Law Society Investigators to contact Calgary Police Services and perhaps someone else on two occasions but did not agree that this meant he had been uncooperative with the Law Society during the course of its investigations. He indicated that he felt the question was irrelevant as it was an issue that had been addressed at the hearing and declined to answer further.

#### **IV. LAW SOCIETY SUBMISSIONS ON SANCTION**

Counsel for the Law Society argued that the Member has a proclivity to accuse others and try to shift blame to others with respect to his misconduct; for example, accusing Mr. [JI] of being a member of an outlaw criminal organization.

Counsel argued that the Committee had found that the Member consistently has a problem with telling the truth, and that there was a pattern of behavior with respect to the Member that when he is stressed or under pressure he makes extremely poor decisions. Counsel submitted that when considering the remarks the Member made under Cross-Examination by the Law Society that the Member operates and has demonstrated that he operates on a plane of his own truth that is not conducive to the practice of law. It is not conducive to the high level degree of trust that must be placed on a member of the legal profession whether as a student or as a full-fledged lawyer.

Counsel asked the Committee to draw an inference from one particular exchange that occurred during the hearing that the Member cannot be trusted to be truthful even to the Committee. Counsel for the Law Society also argued that not only were there issues of integrity and character but the Member had an attitude of defiance towards being governed by the Law Society. This included his misleading or attempting to mislead the Law Society investigator and as illustrated in his behavior with the Legal Education Society Staff. Counsel argued that the Law Society has the statutory obligation under the *Legal Profession Act* to administer the Bar Admission Course and had delegated that

responsibility to the Legal Education Society of Alberta (LESA). For all intents and purposes when anyone deals with LESA in relation to administration of the CPLED Course they are dealing with the Law Society. Thus when a Member is rude and defiant with LESA, it also displays defiance to the Executive Director and the Law Society.

With respect to Mr. [TD]'s evidence in support of the Member, Counsel for the Law Society suggested that most of the evidence provided by Mr. [TD] about the Member comes from the Member. Other than the observations Mr. [TD] can make of the Member as his employee, Counsel for the Law Society argued that no weight be given to Mr. [TD]' opinion as it might go to the Member's character.

With respect to Mr. M.'s report, Counsel argued that the Member never actually called Mr. M. and that the purpose of his meetings with Mr. M. and the content of his letter related to attempts on the Member's part to obtain custody of his son. What the Member told Mr. M. is aligned with his desire to obtain certain results in the child custody matter. Counsel argued that the Member will tell one version of his truth for one purpose and tell a different version for another purpose. Counsel asked the Committee to draw an adverse inference with respect to the Member's character when he failed to call Mr. M. to give evidence in the sanctioning phase.

Counsel argued that the Committee cannot trust the Member when he says today that he has seen the error in his ways and has changed. Counsel suggested that the Member exhibits almost a complete lack of appreciation or understanding for his personal responsibility and his professional responsibility with respect to the matters before the Committee.

Counsel recommended that a global sanction be imposed upon the Member and that the decision lay between a suspension and a termination. The Law Society in the public interest sought termination of the Member's registration.

Counsel provided the case of *Adams v Law Society of Alberta*, 2000, and referred to paragraphs 6, 8, 11, and 16 of that case, submitting that the Member had engaged in discreditable conduct while a student, had mislead the Law Society, his colleagues and that his past behavior was the best predictor of his future behavior.

Counsel reiterated that the reputation of the profession is more important than the fortune of any individual member and that membership in the Law Society is a privilege not a right, which may be lost where honesty and integrity are an issue.

Counsel argued that not only was honesty and integrity in issue for the Member but governability was also problematic in this instance. The Member had not been candid with the Law Society and had misled others. Counsel argued that there are no conditions that the Committee could impose upon the Member that could address his lack of integrity and willingness to deceive the Law Society.

For comparison and consistency of sanction Counsel provided several cases.

Counsel asked that the Member's registration be terminated and that he be directed to pay the actual costs of the Hearing.

## **V. MEMBER'S SUBMISSIONS ON SANCTION**

The Member in his argument stated that he accepted the Committee's findings and accepted its authority. At Transcript page 904 line 18 to Transcript page 905 line 9, the Member tried to explain his previous answers while giving evidence in the sanction phase, as follows:

*"Just as a matter of semantics, when that question was posed to me earlier, I thought that by a yes answer to that question would necessarily mean that ... that I am agreeing with their version of events that were presented by the witnesses, and that's why I .. I had some difficulties answering that question. Again, I accept the findings and I accept the Panels' authority. And I recognize that I presented a version of events with respect to the citations that would... that was different from the version that was presented by the witnesses. And I would say that that was the truth as I .. as I knew it. And I was presenting it in honest fashion. Just through therapy and through .. through .. either processes that I have been involved in, I recognize now and I believe that my perception of events unquestionably is .. was and will continue to be colored by own views and my*

prejudices and my own perceptions, of course but nevertheless when I presented my version to this Panel in April, I was being honest.” [Underline added.]

The Member explained that the issue with respect to his perceived persecution from others had been explored in therapy and he had gained a lot of perspective and had moved forward. The Member had successfully worked with others at Mr. [TD]’s offices since 2010.

The Member asked for reprimand, for conditions to be imposed on his practice and possible a condition that he continues with ongoing counseling unless the therapist deems otherwise. The Member stated that he had paid a heavy price for the citations which had arisen in early 2010 and had been in a state of limbo with respect to his career since then. He had experienced financial hardship for the last 3 years. The Member indicated that his situation really had continued since the incident with Dr. P. and that he had exercised bad judgment over that period because of financial hardship experiences since 2002.

The Member indicated that he arguably had suffered some kind of psychosocial disorder that developed after the Dr. P. incident for a variety of reasons primarily stress and the continued obstacles he experienced in his career. With interventions he could recognize this disorder and gain perspective. The Member clarified that he had not been diagnosed with any disorder, but it was how he had come to view matters himself.

## **VI. REBUTTAL OF THE LAW SOCIETY**

No rebuttal

## VII. ANALYSIS AND SANCTIONS IMPOSED

### A. The Law on Sanctions

*Legal Profession Act*

*Part 3 - Conduct of Members*

*Interpretation*

**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.*

...

**(4)** *Except as otherwise provided, this Part and the rules under this Part apply to students-at-law.*

**(5)** *For the purpose of applying subsection (4) and without limiting the generality of that subsection,*

*(a) references to a member include a student-at-law;*

*(b) references to the disbarment of a member shall, in relation to a student-at-law, be read as references to the termination of the registration of the student-at-law;*

(c) *references to the suspension of the membership of a member are, in relation to a student-at-law, to be read as references to the suspension of the registration of the student-at-law;*

(d) *references to the reinstatement of the membership of a former member shall, in relation to a former student-at-law, be read as references to the reinstatement of the registration of the former student-at-law.*

**(6)** *Proceedings may be taken under this Part against a member with respect to the member's conduct during any period when the member was a student-at-law.*

The *Legal Profession Act*, s. 72(1) requires a Hearing Committee, on finding a Member guilty of conduct deserving sanction, to disbar, suspend, or reprimand the Member.

**72(1)** *If a Hearing Committee finds that a member is guilty of conduct deserving of sanction, the Committee shall either*

*(a) order that the member be disbarred,*

*(b) order that the membership of the member be suspended during the period prescribed by the order, or*

*(c) order that the member be reprimanded.*

The primary purpose of disciplinary proceedings is: (1) the protection of the best interests of the public (including the Members of the Society) and (2) protecting the standing of the legal profession generally: *Law Society of Alberta v. Mackie* 2010 ABLS at para.10. That is the reference point for this Committee. Although the order of a Committee may seem harsh, that is not the goal. In most cases the order of sanction is primarily directed to one or other or both of the following purposes:

One purpose is to be sure that the offender does not have the opportunity to repeat the offence which can be achieved either by a suspension or disbarment.

The second purpose is to maintain the reputation of the legal profession:

*“To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house,*

*very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."* Bolton v. Law Society, [1994] 2 All ER 486 at para. 492 (C.A.)

The Law Society regulates in the public interest:

*"The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practise his profession."* McKee v. College of Psychologists, etc., [1994] 9 W.W.R. 374 at 376 (B.C.C.A.)

The privilege of self-governance is accompanied by certain responsibilities and obligations. The impact of any misconduct on the individual and generally on the profession must be taken into account:

*"This public dimension is of critical significance to the mandate of professional disciplinary bodies."* *"The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing":* Adams v. The Law Society of Alberta, [2000] A.J. No.1031 (Alta. C.A.)

The sanctioning process should involve a purposeful approach. Sections 60 and 61 of the Hearing Guide set out the general and specific factors that this Committee must consider in determining what sanction to impose. Factors which relate most closely to the fundamental purposes outlined above will be weighed more heavily than other factors. The final sanction must be one which is consistent with the fundamental purpose of the sanction process.

The Committee has considered the general factors.

It is important to send a message to the public that the Law Society's oversight of the integrity of those practicing law starts with students at law. Articles are a training period

where unintended mistakes are understood to occur for students and will be forgiven, but lack of integrity is not of that ilk. A message needs to be sent to those who apply for membership with the Law Society that every applicant must be candid with their regulator and with other lawyers and must comply with the Rules of the Law Society from the moment they apply to practice. To enter the profession on the basis of untruthfulness but then argue that one is here now and should be permitted to stay is not consistent with proper regulation of the legal profession.

The Member's behaviour with the police constable and CPLED staff is telling. Lawyers are just people with a certain type of training and they deal with court staff, law office staff and other ordinary persons in the community each and every day. Dealing with the public and other persons in the justice system in demeaning ways depending on whether one sees them as equals or otherwise is not the hallmark of a professional.

With respect to the potential for the Member's rehabilitation, a person either is or is not honest, and possesses or does not possess integrity. A person either does or does not have respect others and either does or does not have an appreciation for what they do and the services they offer. The Member has demonstrated his lack of professionalism and lack of integrity as a student and it is sufficient to make it clear that he is unsuitable to practice law and will not enhance the profession in any way. There is no need to further test those waters.

The Committee has also considered specific factors in this case:

The nature of the Member's conduct raises concerns about the protection of the public. The Member generally acts from his own self-interest. He says what he says and does what he does at any given time to achieve his personal goals. The public cannot be protected from a lawyer whose primary goal is to do what is in his own best interests.

The Member's conduct raises concerns about maintaining public confidence in the legal profession. If all lawyers behaved as has the Member, it would prove the case for stereotypically obnoxious lawyer behaviour which does not support public confidence in the profession.



With respect to how the Member's activities weakened public respect for the justice system the Alberta Court of Appeal in *Adams v. Law Society of Alberta* 2000 ABCA 240 at paragraph 8 -10 states succinctly as follows: :

*[8] Although arising in a different context, the Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in Hill v. Church of Scientology of Toronto, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130. At 1178, Cory J. said:*

*The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.*

*[9] Every member is or ought to be aware that not only one's professional conduct, but also one's personal conduct may be subject to scrutiny when that conduct may likely affect one's professional reputation, integrity and trustworthiness. The misconduct may or may not be criminal. Unlike criminal behaviour per se, the individual's misconduct may have a significant effect on the reputation of the legal profession generally.*

*[10] Historians may question the origin and the history of the oft-repeated statements about the honour and integrity of the legal profession, but it cannot be denied that the relationship of solicitor and client is founded on trust. That fundamental trust is precisely why persons can and do confidently bring their most intimate problems and all manner of matters great or small to their lawyers. That is an overarching trust that the profession and each member of the profession accepts. Indeed, it is the very foundation of the profession and governs the relationships and services that are rendered. While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal profession will be eroded by disreputable conduct of an individual lawyer."*

The Member's conduct raises concerns about the ability of the legal system to function properly. The Member's word is not his bond. He does not tell the truth if it does not suit him. If challenged he offers that the truth is how he sees it based on his version of reality. Imposing trust conditions on this Member would be ineffective. What he might say to another lawyer on a file or represent to a court could not be relied upon.

The Member's conduct raises concerns about the ability of the Law Society to effectively govern all of its members. It is clear that Law Society staff take the information provided in applications to the Society at face value as true. This is not surprising, since the statements are sworn. The result in this case has been for someone unsuitable to practice law to gain a foothold. Disengaging the Law Society and the Member from the situation has been a prolonged and difficult process. It has created hope for the Member where this is unrealistic. That is a tragedy. But it would be a greater tragedy for the Member to continue to practice law and thus place the public in danger.

The appropriate sanction may vary depending on whether the Member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain the public confidence in the legal profession may require a particular sanction regardless of the state of mind of the Member at the time. The Member acted intentionally when he completed his applications to the Law Society for admission as a student. The Member in large part blames financial hardship for his poor decisions. The practice of law is a challenging profession and operating a law practice is stressful and difficult. This Member's likelihood of poor decision making as related to financial pressures would not end if he were permitted to practice as a lawyer.

The Member has primarily damaged himself by his conduct. Fortuitously his conduct has been identified and addressed by the Law Society before others are impacted.

The potential for harm to a client, the public, the legal system or the profession should the Member remain in practice is very high. It would be only a matter of time before the Member made another poor decision in his practice that would create damage to someone or some entity.

Sufficient incidents were involved to create a pattern and permit this Committee to make its decision as to sanction.

The Member was asked by Counsel for the Law Society whether he had appealed the Committee's findings. He was uncomfortable responding to that question. He did indicate that he had made inquiries about an appeal period. The Committee has disregarded this information in its decision making on sanction. The Member is certainly free to appeal if he chooses and inferences ought not to be drawn in relation to this choice.

## **B. Integrity and Governability**

The Member lacks integrity. The Member operates primarily in "survival mode" where anything goes and truth is a malleable concept. As one underlined response above demonstrates, the Member is only "more inclined" to make admissions, as opposed to committed to the truth and full disclosure to his regulator. The profession needs more from its members than that.

The Committee found that the Member was not candid with the LSA Investigators in relation the assault upon Dr. P. that the Member was not candid with the LSA Investigators in relation to the incident with his principal, [JI], and 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.

The Committee also found that the Member further was not candid with the LSA Investigators when asked what he had been charged with criminally as an adult.

All of these findings go to lack of governability. The Member is not governable.

Of further concern: as the Member's responses to questions demonstrate, the Member does not really accept the findings of the Committee. He says he does because he wants to be a lawyer but his answers demonstrate that really does not accept the

Committee's findings and thus to reprimand or suspend this Member would be a hollow sanction.

### **C. Special Circumstances/Aggravating/Mitigating Factors**

The Hearing Committee has considered special circumstances (aggravating/mitigating) including the following:

#### *Mitigating:*

The Member does not have a prior discipline record.

There is evidence of some interim rehabilitation at Mr. [TD]'s offices.

During the hearing, the Member did apologize to Dr. P. and to the CPLED staff.

The Member has undertaken, primarily in relation to his efforts to gain custody of his child, some therapy with Mr. M., M.S.W., a registered social worker, and has partially completed a [...] anger management program. He apparently is meeting the expectations of Children's Services, not getting at odds with them. However, the Member did not call Mr. M. to give evidence at this hearing when he clearly could have.

The Member may have some kind of psychosocial disorder that developed after the Dr. P. incident for a variety of reasons primarily stress and the continued obstacles he experienced in his career.

#### *Aggravating:*

The Member has not even been called to the Bar and he has already been found guilty of disciplinary infractions. This is quite unusual.

The Member's reaction to the discipline process has not been positive. The Member walked out on the Investigators at an interview. He was not candid with the Interviewers. He withdrew his consent for the Investigators to contact third parties, on two occasions.

The Member did not fully and freely disclose to those involved in the complaint and hearing process. He did not show a wholly cooperative attitude toward the proceedings. The Member blamed others for his circumstances.

Although the Member apologized to Dr. P., he still maintains that his version of the situation provided to the Law Society when he applied to become a student was true and was reasonably based on his perceptions. These two positions are very inconsistent.

The Member's activities stem from dishonest and selfish entirely personal motives. The Member wants to be a lawyer at all costs.

The Member is not remorseful. His proposed sanction was that he be reprimanded. He did not agree with several of the findings of the Committee. Suggesting that one will accept a reprimand for things one does not accept that one has done is tantamount to thumbing one's nose at the entire disciplinary endeavor.

The Preface to the Code of Conduct, as it then was, states:

*"The legal profession is largely self-governing and is therefore impressed with special responsibilities. For example, its rules and regulations must be cast in the public interest, and its members have an obligation to seek observance of those rules on an individual and collective basis."*

*Law Society of Manitoba v. Ward*, [1996] L.S.D.D. No.119 at p.5:

*"In our view, the right to practice law carries with it obligations to the Law Society and to its members. The minimum obligations in our view are, compliance with rules and communication with the Society as might reasonably be expected. Ward has persistently failed to comply with the rules and to communicate with the Society. This is all without any explanation or excuse of any kind whatsoever. The justification for self-government is at least partly based on the assumption that the Society will in fact govern its members and that members will accept governance. Ward has demonstrated through his behaviour that he does not accept governance."*

*Bolton v. Law Society*, [1994] 1 W.L.R. 512 at 519 (C.A.); applied in *Law Society of Upper Canada v. Jacobs*, [1995] L.S.D.D. No.151 at p.18:

*“Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”*

*Law Society of New Brunswick v. Michael A. Ryan* [2003] 1 S.C.R. 247 at paragraph 59:

*“There is nothing unreasonable about the Discipline Committee choosing to ban a member from practicing law when his conduct involved an egregious departure from the rules of professional ethics and had the effect of undermining public confidence in basic legal institutions. “*

*Adams v. Law Society of Alberta*, 2000 ABCA 240 at paragraph 11:

*“[11] It is therefore erroneous to suggest that in professional disciplinary matters, the range of sanctions may be compared to penal sentences and to suggest that only the most serious misconduct by the most serious offenders warrants disbarment. Indeed, that proposition has been rejected in criminal cases for the same reasons it should be rejected here. It will always be possible to find someone whose circumstances and conduct are more egregious than the case under consideration. Disbarment is but one disciplinary option available from a range of sanctions and as such, it is not reserved for only the very worst conduct engaged in by the very worst lawyers.”*

In reference to the facts in this case: this Member has not yet had an opportunity to display: *“the very worst conduct engaged in by the very worst lawyers.”* That does not mean that the Law Society is obliged to wait for it to happen.

Having heard argument on sanction, reviewed the case law and given consideration to all of the general and specific factors above, and any special circumstances, the Committee has determined that the Member’s registration with the Law Society of Alberta shall be terminated.

#### **VIII. FINDINGS AND CONCLUSIONS AS TO SANCTIONS AND COSTS.**

The Hearing Committee orders that:

1. The Member’s registration with the Law Society of Alberta shall be terminated.
2. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member’s former clients, and any information subject to proper claims of privilege.
3. A Notice to the Profession is directed.
4. The Member will pay the full costs of the hearing as per Exhibit 59.

**DATED** this 4<sup>th</sup> day of July, 2013 at the City of Calgary in the Province of Alberta.

Per: \_\_\_\_\_

**SARAH KING D'SOUZA, Q.C.**

Per: \_\_\_\_\_

**ANNE KIRKER , Q.C.**

Per: \_\_\_\_\_

**WAYNE JACQUES, CA**