

**IN THE MATTER OF PART 3 OF THE *LEGAL PROFESSION*
ACT, RSA 2000, C. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF NAVDEEP VIRK, A MEMBER OF THE LAW
SOCIETY OF ALBERTA**

Hearing Committee

Doug McGillivray, Q.C. – Chair
Barbara McKinley – Bencher
Buddy Melnyk – Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Karen Hanson – Counsel for the Law Society of Alberta
Mona Duckett, Q.C. – Counsel for Navdeep Virk

Hearing Date

December 17, 2019

Location

10104 - 103rd Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT – SANCTION PHASE

OVERVIEW

1. Navdeep Virk (Virk) was admitted as a member of the LSA in 2007. His practice was in Edmonton, Alberta, in a number of areas including family law and civil litigation. A hearing arose as the result of seven complaints against Virk from clients, other lawyers and the LSA. Originally there were 20 citations, which at hearing were revised such that the Hearing Committee proceeded to hear 19 citations.
2. After a hearing on the merits held June 17-19, 2019 and June 25-28, 2019, and for the reasons set out in the Hearing Committee Report dated September 9, 2019, Virk was found guilty of 15 of the 19 citations that were proffered against him.
3. After reviewing all of the evidence and exhibits introduced at the hearing, the testimony of Dr. C.E. and [A] during the sanction phase, the exhibits tendered in the sanction phase and the submissions of counsel for the LSA and for Virk, the Hearing Committee finds that, based on the facts of this case, the appropriate sanction is disbarment. In

accordance with Section 72 of the *Legal Profession Act* (the *Act*), the Hearing Committee orders that Virk be immediately disbarred.

4. In addition, pursuant to Subsection 72(2) of the *Act*, the Committee orders that Virk pay costs in the sum of \$82,500.00. The costs are payable immediately and, in any event, must be paid prior to any application for reinstatement.

SUBMISSIONS ON SANCTION

5. The facts related to the sanctionable conduct are set out in the Hearing Committee's decision on the merits dated September 9, 2019. This phase of the hearing was to consider the appropriate sanction for that conduct.
6. The LSA counsel submitted that as Virk's conduct related to seven separate and unrelated complaints, which covered matters of integrity, professional obligations in the course of file handling and governance obligations with respect to his duties to the LSA, the appropriate sanction should be disbarment.
7. Virk's counsel argued that an appropriate sanction in the circumstances should be a lengthy suspension in the range of 12 to 24 months in accordance with the cases provided by Virk's counsel. Virk's counsel urged that consideration be given to the mental illness (previously untreated) that Virk was diagnosed as having. Her submission was that a lengthy suspension would afford time for Virk's mental health conditions to be actively treated before reinstatement. Counsel for Virk further argued that considerations related to "the duty to accommodate" should be given credence in this case.
8. The LSA's counsel argued in response that the evidence did not support Virk having a mental condition that would affect his ability to make truthful statements or otherwise affect his integrity. In short, LSA counsel asserted that the medical evidence did not support a link between Virk's mental illness and the integrity issues of which Virk had been found guilty.

THE EVIDENCE ON SANCTION

9. Two witnesses were called on behalf of Virk.
10. Dr. C.E. is a medical doctor with a speciality in psychiatry, addiction medicine, and occupational and behavioural assessments relating to mental health. He tendered a detailed report dated November 18, 2019 (Exhibit L), which outlined his dealings with Virk, the methodology of his assessment, the information received prior to his assessment, the summary of the background information, and responses to five questions posed of him.
11. It was Dr. C.E.'s opinion that Virk suffers from [mental health issue], which in his opinion could have a profound impact on cognitive and overall functioning, as well as social, interpersonal, and occupational performance (See Exhibit L, paragraphs 4 and 5). Dr. C.E. further found that Virk displayed [redacted] but did not meet the criteria for [redacted] (Exhibit L, paragraphs 8 and 9). In the course of forming his opinion, Dr. C.E. concluded that in his clinical judgment supported by validity testing and toxicology testing, as well as a review of collateral information, Virk, during at least a part of the period of the time in which the conduct under discussion occurred, was amidst either a

[mental health] episode, which likely fluctuated over time. Regarding [redacted] traits, Dr. C.E. opined based on his independent medical examination there was, on a balance of probabilities, at least in part, a connection between the conduct and the mental health diagnoses of [mental health issue]. Dr. C.E. was of the opinion that the connection was sufficiently close to suggest that [mental health issue] materially contributed to the conduct under discussion.

12. Dr. C.E. was candid in acknowledging in his report that the [mental health issue] diagnosis does not provide an exhaustive nor a complete explanation for Virk's conduct. He was unable to suggest that Virk lacked the capacity to change his behaviour if he chose. He was unable to support the notion that but for the [mental health issue], Virk would not have engaged in the conduct under discussion (Exhibit L, paragraph 16).
13. Dr. C.E. opined that [redacted], he did not find sufficient evidence to suggest that Virk's symptoms were impairing to a degree that he could not appreciate the nature and quality of his conduct or his omissions or that he could not appreciate that such conduct might fall outside the required professional code of conduct (Exhibit L, paragraph 17). Dr. C.E. testified and wrote in his report that he did not find evidence to suggest that Virk did not understand his professional obligations or that he did not understand the potential consequences of his conduct (Exhibit L, paragraph 17).
14. On cross-examination, Dr. C.E. testified that the absence of memory was not a diagnostic criterion for [mental health issue]. He further testified that [mental health issue] should not affect Virk's integrity nor his ability to recognize the difference between the truth and a lie.
15. Dr. C.E. further stated Virk's [mental health issue] was capable of being effectively treated [redacted]. He did state that Virk was at a high risk to relapse because his [redacted]. In such circumstances, Virk would run a higher risk of discontinuing his treatment protocols and relapsing to his former behaviours, which could in part affect his performance as a lawyer.
16. [A] was also called to testify. [redacted]. Overall, [A]'s testimony tended to corroborate to an extent the behaviours that Dr. C.E. diagnosed.
17. Virk did not testify at the sanction phase and because of this we have no direct evidence from him regarding his understanding of his medical condition and his commitment to treatment.

ANALYSIS AND DECISION ON SANCTION

18. In conducting our analysis, we have considered the cases provided by Virk's counsel, the cases provided by LSA counsel, the Hearing Guide and the Code of Professional Conduct.
19. As was pointed out by LSA counsel, the conduct for which Virk had been found guilty occurred over a number of years and involved discrete instances of his conduct that, in part, overlapped with another LSA hearing process, which had been concluded but for the subject of appeals to the Benchers and ultimately the Court of Appeal.

20. It is noted that of the citations for which Virk has been found guilty, six involved serious shortcomings regarding his integrity, four of the citations reflected upon his governability in his deficiencies with his dealings with the LSA and the remaining ones dealt with his shortcomings to meet his professional obligations to his clients and to other lawyers. Some of the conduct resulted in harm and inconvenience to others.
21. Section 49(1) of the *Act* sets out as follows:
- For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
- (a) is incompatible with the best interest of the profession or 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.
22. In short, the underlying purpose of disciplinary proceedings under the *Act* is the protection of the best interests of the public, which includes members of the LSA and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession. In carrying out this mandate, a hearing committee may be obliged to make orders that might otherwise seem harsh. The orders that we make are to ensure that Virk does not have an opportunity to repeat the offenses and to maintain the reputation of the legal profession as one in which every member may be trusted to the ends of the earth. This second purpose is the most fundamental of all (see *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.)).
23. The purpose of LSA disciplinary proceedings is not to punish offenders. It is to protect the public, to maintain high professional standards, and to preserve the public's confidence in the legal profession: McKenzie, Gavin, *Lawyers & Ethics, Professional Responsibility and Discipline*, at page 26-1.
24. In this case, Virk's conduct runs the gamut from lacking integrity, failing to serve clients, acting with impropriety concerning his fellow lawyers and their clients, and failing to cooperate with his governing body where he was mandated to do so. Short of stealing other people's property, there is not much more that Virk could have done wrong.
25. Particularly problematic is the number of occurrences arising from the number of complaints over an extended period of time.
26. The medical evidence in this case introduces a new factor. We accept that Virk is suffering from [mental health issue] and that it would have some bearing on the conduct that occurred. We accept that Virk is capable of being treated. However, based on the evidence presented, we believe that Virk is at high risk of relapsing in his treatment protocol because his [mental health issue] overlaps with some behavioural traits, in particular, [redacted]. In addition, we are of the view that the mental health disorder from which Mr. Virk is suffering has little or no bearing on his ability to tell the truth nor his

ability to understand and appreciate the consequences of his professional obligations to his clients, to his fellow members and their clients, to the courts and to his governing body.

27. Virk's counsel suggested that the LSA has a duty to accommodate Virk's mental health condition. The concept of the duty to accommodate is to make reasonable efforts to adjust the enforcement of the LSA rules to take into account Virk's mental health condition. The Hearing Committee views that while the duty to accommodate is important and might be applicable in the appropriate circumstances to a regulatory scheme such as the LSA's, we note that it is more commonly used in the employment context.
28. The Hearing Committee also views that the fundamental premises of the *Act* to protect the public and to protect the integrity of the profession are paramount, and may, in some circumstances, result in these considerations taking precedence over any duty to accommodate.
29. We do not purport by this decision to try to delineate the circumstances where the duty to accommodate may be in harmony with the legislative principles for conduct deserving of sanction under the *Act*. We find that in this case, given the testimony of Dr. C.E. concerning the issues of integrity, Virk's claims of memory lapses and his falsehoods are not caused by his mental illness. We further find that Virk's mental illness did not affect his understanding that his behaviour would be a violation of his professional obligations.
30. Further, the Hearing Committee has concerns as to whether Virk will be a successful candidate for rehabilitation. Dr. C.E.'s testimony was that in the medical profession, treatment protocols are established over a five-year timeframe, which, if successful, bodes well for the future.
31. In the case of the disbarment, Virk will be entitled to seek reinstatement after one year. No doubt, his treatment success will have some bearing on that application if it is to be made.
32. Overall, we were not persuaded on the evidence that there was a causal or contributory connection between Virk's mental disorder and any of his misconduct, particularly the more serious aspects such as the integrity-related breaches and ungovernability. Therefore, we do not believe that his disorder can be considered as a mitigating factor for that behaviour, such that appropriate sanction should be reduced.
33. Virk had a prior record that resulted in a short suspension. That record related to his failure to serve his clients properly. There were some similarities between that conduct and the professional responsibility conduct of which we found him guilty. Virk's numerous false statements violate the core of what is expected of a lawyer.
34. These statements occurred in a number of instances over a protracted period of time and cannot be accounted for by any mental illness. As a consequence, we believe that the LSA, the public and the profession cannot be adequately protected by his suspension. We further believe that other members of the profession should, on reading this hearing report, be aware that such conduct is unacceptable and will result in very serious sanctions. Finally, we believe by the disposition we make that the public at large

can be comforted to some degree that the legal profession places integrity above self-interest.

35. As a consequence, it is our view that Virk should be disbarred. We do so order.

CONCLUDING MATTERS

Costs

36. The Law Society presented an Estimated Statement of Costs (Exhibit N), in the sum of \$98,497.69 including disbursements.
37. The Hearing Committee noted that of the 19 citations, Virk was acquitted on four. As a consequence, the Hearing Committee's view is that some accommodation should be made in the amount of costs to reflect that success. It is noted however that the success on the citations for which he was acquitted did not amount to a great deal of hearing time or would not have significantly shortened the hearing.
38. As a consequence, the Hearing Committee fixes costs in the sum of \$82,500.00 payable forthwith.

Exhibits, Hearing Materials, the Merits Hearing Report and the Sanction Hearing Report

39. The Committee has determined that, subject to redaction of names and personal information from the reports or any of the exhibits, they shall be generally made available to the public on the payment of the appropriate fees.
40. Dr. C.E.'s report, and the medical reports produced during the merits portion of the hearing, shall not be made available to the public, as they contain personal information of Virk as well as other persons not part of this hearing.

Report to the Attorney General

41. The Hearing Committee found no reasonable or probable grounds to believe that a criminal offense had been committed and thus makes no direction that there should be a referral to the Attorney General.

Notice to the Profession

42. The Hearing Committee directs that the profession and the public be notified of the outcome of this hearing and the sanctions made.

Dated at Edmonton, Alberta, January 31, 2020.

Doug McGillivray, Q.C. – Chair

Barbara McKinley

Buddy Melnyk