



DAVIN BURLINGHAM
HEARING DATES: November 8, 2024 and January 23, 2025
DECISION ON CONDUCT UNBECOMING DATE: March 11, 2025
CORRIGENDUM DATE: March 21, 2025
PENALTY HEARING DATE: May 2, 2025
DECISION ON PENALTY DATE: June 13, 2025
CORRIDENGUM DATE: July 11, 2025

Law Society of Saskatchewan v. Davin Burlingham, 2024 SKLSS 5

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DAVIN BURLINGHAM,
A LAWYER OF SASKATOON, SASKATCHEWAN

Corrected Decision:	Corrigenda were issued in relation to both the Decision on Conduct Unbecoming (paragraph 119) and the Decision on Penalty (paragraph 22). Both Corrigenda are appended immediately after each decision below.
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**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

INTRODUCTION

1. On November 8, 2024, a Hearing Committee of the Law Society of Saskatchewan convened virtually via MS Teams to hear and determine a formal complaint into the conduct of Davin Burlingham (the “Member”). The panel was comprised of Foluke Laosebikan, K.C. as chair, Melissa Nicolls and Len Daniels. The Law Society of Saskatchewan was represented by Timothy Huber, K.C. The Member was present for the Hearing on November 8, 2024 and absent for the final submissions on January 23, 2025. The Member was not represented by counsel on either date.

JURISDICTION AND PRELIMINARY MATTERS

2. The Hearing Committee reminded the Member of his right to counsel and his freedom to elect not to proceed in the absence of counsel. The Member wished to proceed with the hearing.

3. Jurisdiction was established. The Member elected not to respond to the question as to whether he objected to either the composition of the Hearing Committee or the jurisdiction

of the Hearing Committee to consider the case.

4. There were no applications to hold the hearing in private. Accordingly, the hearing, although held virtually, was a public hearing.

CITATION

5. The Member was responding to the following citation:

THAT DAVIN BURLINGHAM of the City of Saskatoon in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

- (1) Failed to perform all legal services undertaken on behalf of his client, N.B., in a competent manner;
- (2) Failed to reply promptly and completely to communications from the Law Society of Saskatchewan;
- (3) Failed to encourage public respect for the administration of justice by publishing criticism about the Saskatchewan Court of King's Bench that was intemperate and unsupported;
- (4) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by publicly making unfounded allegations that the court, and or its officers, were corrupt;
- (5) Failed to be courteous and civil and act in good faith towards a fellow member of the Law Society of Saskatchewan, S.M., in that he made ill-considered comments to her alleging that her firm was engaged in corruption;
- (6) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by, without authorization, surreptitiously recording, or causing the surreptitious recording of, court proceedings in violation of Court of King's Bench Rule 9-33 and Court of King's Bench Practice Directive #10;
- (7) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect on December 19, 2023, when, during a court proceeding acting on behalf of his clients ATD and T.M., he left the courtroom in the middle of the proceeding and did not return;
- (8) Failed to perform all legal services undertaken on behalf of his clients ATD and T.M., in a competent manner; and
- (9) Conducted himself in a manner that is ungovernable.

BACKGROUND AND SUMMARY OF PROCEEDINGS

6. The genesis of this matter was a complaint that the Law Society received regarding the Member's management of a power of attorney matter. It was alleged in the complaint that that the Member failed to assess a client's competence where there was medical documentation that the client had capacity issues. When the matter proceeded to court, the Member

continued to act as counsel, meaning he could not act as a witness, possibly to the client's detriment.

7. The Law Society was of the view the power of attorney complaint did not warrant a disciplinary response. Instead, the Law Society appointed a practice advisor to complete a review of the Member's practice. The Law Society advised that the role of a practice advisor in practice management is to coach a member to improve their conduct.

8. After completing the review of the Member's practice, the practice advisor submitted a report by letter to the Law Society dated May 12, 2021 (the "Report"). The Report contained several recommendations regarding the Member's practice, including a recommendation for referral to the Law Society's Competency Committee.

9. The Law Society accordingly referred the matter to the Competency Committee as recommended and further requested that the Member provide an update on his implementation of the Report's recommendations. The Member told the Law Society he would be implementing some recommendations but not others.

10. By letter dated November 28, 2022 sent by the Law Society to the Member via email, a representative of the Competency Committee (hereafter the "Competency Committee") recommended the Member arrange for a practice supervisor/mentor. By email dated November 28, 2022, the Member advised the Competency Committee that he did not agree with the recommendation. By email dated December 6, 2022, the Competency Committee confirmed receipt of the Member's position and requested the Member advise within seven days if he changed his mind. On January 10, 2022, the Competency Committee advised the Law Society by email that they received no further response from the Member.

11. In 2023, the matter was referred to the Law Society's Conduct Investigation Committee, which appointed a Conduct Review Committee. In October 2023, the Conduct Review Committee requested the Member provide dates for the review meeting. The Member declined the meeting. The matter was referred back to the Conduct Investigation Committee for further review.

12. Following these events, the Law Society sent a letter to the Member dated January 21, 2024 raising several issues, to which the Member provided a response. In the meantime, and since about January 2024, the Member published materials online alleging, among other things, corruption in the Saskatchewan Court of King's Bench (the "Court"), which are in part the subject of this proceeding.

13. Prior to the November 8, 2024 hearing date, the Law Society filed an exhibit book. No materials were received from the Member prior to the hearing date. At the November 8, 2024 hearing, the Hearing Committee (hereafter the "Committee") invited each party to provide opening statements, present evidence and complete cross examinations. At the conclusion of the hearing on November 8, 2024, having heard the evidence provided, the matter was adjourned to January 23, 2025 to allow the parties to provide written submissions. Law Society counsel (hereafter "counsel") was to provide their submissions by December 11, 2024, and the Member to provide his submissions by January 6, 2025. The Committee received written submissions from counsel on December 9, 2024. No submissions were received from the Member.

14. On January 23, 2025, the Committee reconvened virtually by MS Teams to hear the

parties' submissions. Mr. Huber again appeared as counsel for the Law Society. The Member did not appear. The Committee adjourned the hearing for 30 minutes during which time a Law Society representative emailed the Member and left a voicemail message for him. The Member could not be reached. Following a brief deliberation, the Committee ruled that the hearing would proceed in the Member's absence noting that: the Member was aware of the hearing date as he was in attendance when it was scheduled at the November 8, 2024 hearing; the MS Teams meeting date and meeting link for the hearing were sent by the Law Society to the Member at the same yahoo.ca email address to which the Notice of Hearing for the November 8, 2024 hearing had also been sent; and efforts were made to contact the Member by email and telephone before proceeding with the hearing.

15. Having previously filed written submissions, counsel indicated they had no additional oral submissions but responded to several questions from the Committee.

16. The Committee reserved its decision to provide a written decision with reasons at a later date.

THE HEARING

Opening Statements

17. Law Society counsel indicated that allegation 1 would not be pursued at the hearing. Accordingly, this allegation was adjourned *sine die* at counsel's request.

18. The summary of the opening statement by counsel is that the Member had conducted himself in a manner unbecoming of a lawyer and that the Member through his conduct has demonstrated that he does not want to be a lawyer.

19. The Member declined to provide an opening statement.

Presentation of Evidence

20. Counsel tendered a total of 24 exhibits. None were objected to by the Member. All tendered exhibits were admitted into evidence and marked Exhibits L1 to L24 consecutively. Exhibits L10 to L23 were admitted into evidence in one motion.

21. Additionally, counsel presented two witnesses who provided sworn testimony regarding specific exhibits and recounted specific incidents of which they had first-hand knowledge. The Member cross-examined both witnesses.

22. The Member did not provide evidence and called no witnesses.

Direct and Cross Examination- Ms. P.

23. The first witness, Ms. P., testified that in her role at the Law Society, she receives and processes complaints against lawyers and investigates some complaints. She then described the chronology of events that led to the present proceeding, which are set out above. Ms. P also testified to the facts underlying the allegations at issue in this proceeding, which are discussed below as they relate to each allegation.

24. The Member cross examined Ms. P. first in relation to the fact the Law Society did not notify the public, or require the Member to advise his clients, of his “incompetence” for four years, from about 2020 to 2024. Ms. P. explained that the Law Society never concluded the Member was incompetent to practice law, so the public was not so informed. Ms. P. further explained that the Law Society is restricted in the information it is permitted to make public and it does not report to the public on all complaints. In particular, the Law Society may make publicly available notices of suspension and practice conditions and suspensions. As such, the public was notified about the Member when the Law Society issued a Notice of Interim Suspension in February 2024.

25. The Member alleged that the Law Society practice advisor appointed to the Member’s practice had a potential conflict of interest, in that as a plaintiff’s side medical malpractice lawyer, the practice advisor made recommendations to restrict the Member from practicing in that same area. The Member cross-examined Ms. P. in relation to this allegation and in relation to the practice advisor’s qualifications and competence. Ms. P. generally explained how the Law Society contracts practice advisors and advised that the practice advisor in question had been contracted by the Law Society for about 15 years, so their qualifications were known to the Law Society. Ms. P. further explained that it was coincidence that the said individual’s practice was in the area of medical malpractice, and that the Law Society was not aware the Member had a medical malpractice file that would cause the practice advisor concern.

26. The Member also questioned Ms. P. about the due diligence the Law Society conducted when it received the practice advisor’s Report. Ms. P. explained that the due diligence would have been conducted by the Conduct Investigations Committee, which is not subject to the oversight of the Law Society.

Direct and Cross examination- Mr. G.

27. The second witness, Mr. G., confirmed that he and Mr. S., another lawyer and member of the Law Society, were appointed by Court order at the Law Society’s request to act as the trustees of the Member’s practice. He described the role and responsibilities of a trustee and explained that he and Mr. S. were to take control of the Member’s practice and endeavour to ensure there was no prejudice to the Member’s clients.

28. Mr. G. testified that on February 12, 2024, he went to the Member’s home with Mr. S. and an articling student and served the Member with the Notice of Interim Suspension. The Member did not permit them to take his files or practice materials at that time. On February 14, 2024, Mr. G. and Mr. S. returned to the Member’s home with Saskatoon police and took possession of various materials from the Member’s work area. Mr. G. further testified that he emailed the Member several times (including on February 12, 13, 14 and 22, 2024) with questions about the Member’s files, and called the Member at least twice, but never received a response. Mr. G. testified he had no contact with the Member during the trusteeship.

29. On cross-examination, Mr. G. confirmed that when he attended the Member’s home on February 12, 2024, the Member made some comments to the effect that there are criminals in charge of the court.

Statements of the Member, Rebuttal and Submissions

30. In the course of the November 8, 2024 hearing, the Member stated that the Law

Society was “exactly right” that he did not want to be a member of the Law Society. The Member claimed that the practice advisor assigned by the Law Society to his practice had a conflict of interest in dealing with his practice.

31. The Member did not dispute or deny any of the allegations against him. He expressed the view that the Court and certain judges were corrupt. He also questioned Ms. P. rigorously regarding the Law Society’s actions and decisions with respect to his suspension. His questions and arguments centered around the view that if he was truly incompetent to practice law, the Law Society should have notified the public, and that in not notifying the public that he was incompetent, the Law Society had failed in its duty of protecting the public and should be disbanded.

32. He concluded by stating that he did not wish to be a part of the Law Society and requesting that the Committee suspend him at the close of that day’s proceedings. The Committee reminded him of the importance of following due process and advised that in accordance with the principles of procedural fairness, he would be provided ample opportunity to make submissions.

33. There was no rebuttal evidence from the Law Society as the Member did not dispute any of the evidence adduced by the Law Society and the matter was adjourned to January 23, 2025 to allow the parties to provide written submissions.

ARGUMENTS AND ANALYSIS

34. The burden of proof in this matter is on the Law Society to prove the facts and the conduct deserving of sanction. The standard to be met by the Law Society is the civil standard: “on a balance of probabilities”, meaning the Law Society must adduce evidence that is sufficiently clear, convincing and cogent demonstrating that it is more likely than not that the Member engaged in the conduct alleged (*F.H. v McDougall*, [2008 SCC 53](#) at para 40; *Law Society of Saskatchewan v Clements*, [2013 SKLSS 10](#) at para 16).

Allegation 2: Failure to respond promptly and completely to the letter from the Law Society.

35. The evidence shows that on January 31, 2024, a representative of the Law Society sent a letter to the Member identifying four primary matters to which the Member was required to respond (the “Law Society Letter”). First, the letter requested the Member confirm as soon as possible if he was willing to meet with the Conduct Review Committee regarding the Report and the power of attorney complaint. Second, the letter advised the Member that the Law Society had opened a new complaint in respect of a January 2, 2024 email the Member had sent to a fellow member of the Law Society (the “January 2024 Email”) and requested the Member’s immediate explanation and response to that complaint. Third, the letter advised the Member that the Law Society had opened a new complaint relating to the Member’s apparent recordings of a Court hearing (the “Recordings”), transcripts of which were posted to social media, and requested the Member’s immediate explanation and response to that complaint. Fourth, the letter referenced the *Code of Professional Conduct* (“Code”) in relation to the Member posting the first page of a Fiat - containing the names of the Member’s clients - to the Member’s X (formerly Twitter) account and requested the Member’s immediate explanation and response.

36. On February 1, 2024, the Member emailed the Law Society in response to the Law

Society Letter. The email reads as follows:

Good morning,

Listen, I tried to resign. I couldn't because there are too many people who need me to run their trials. I have trials booked through April 2024. Most of the clients are in jail and have no other option.

There is a massive corruption problem in King's Bench. Provincial Court seems to be working just fine.

The way to deal with the corruption in King's Bench is to have everything out in the open. Court happens in public in a free country.

If you want to disbar me, please get on with it. Otherwise, I have trials to run

Thanks,

37. The above email was also posted to the Member's X account.

38. The Law Society argues that the Member's response did not explain or address the concerns raised in the Law Society Letter, as requested. Instead, the email invited the Law Society to disbar the Member and raised allegations of corruption in the Court. The Law Society further argues that in failing to provide a substantive response to the Law Society Letter, the Member is in breach of section 7.1-1 of the *Code*, which provides: "A lawyer must reply promptly and completely to any communication from the Society."

39. Section 7.1-1 of the *Code* requires the Member's response to have been both prompt and complete. The use of the word "and" suggests the phrase should be read conjunctively, meaning both elements have to be present; however, in some cases "and" will be read disjunctively, such as where necessary to avoid ambiguity or absurdity. (See, for example, *Unique Broadband Systems Inc., Re*, [2014 ONCA 538](#) at paras [97-98](#) regarding contract interpretation; *Canada (AG) v Laforest*, [1988] FCJ No 546, [1988 CarswellNat 864](#) (FCA) at paras 13-15 regarding statutory interpretation; and *R v North American Van Lines (Alberta) Ltd.*, [1986] OJ No 924 (ONCA), [1986 CarswellOnt 2](#) at para 17 regarding interpretation of a license.)

40. In *Peet v The Law Society of Saskatchewan*, [2013 SKLSS 4](#) affirmed [2014 SKCA 109](#), the Hearing Committee concluded the purpose of the previous version of section 7.1-1, requiring that the response be only prompt, goes to the Law Society's ability to carry out its legislated mandate, in that the obligation "is at the heart of the regulation of the profession, a cornerstone of the right to self-govern" (at para 51, relying in part on *The Law Society v Werry*, [2010 LSS 3](#) at para 9). The current version of section 7.1-1 requires that members' responses to the Law Society be not only timely, but also responsive. This added requirement furthers the Law Society's purpose in regulating the profession. The Committee is therefore of the view this purpose likewise informs the current version of section 7.1-1.

41. The Committee adopts the view that the intent and purpose of section 7.1-1 of the *Code* is that the words "prompt and complete" should be read conjunctively to mean that member responses to the Law Society must satisfy both elements. As such, it is the Committee's view that to satisfy the requirement of section 7.1-1 of the *Code*, the response

provided to the Law Society by the Member must have been both prompt and complete.

42. Accordingly, this Committee finds that the Member's response to the Law Society in this matter, though prompt, was not complete in that it did not address the major issues which the Law Society required the Member to address in the Law Society Letter. As such, the response did not satisfy the requirement of the *Code*. The Committee thus finds that the allegation that the Member failed to reply promptly and completely to communications from the Law Society is substantiated.

Allegations 3 and 4: Undermining public respect for the administration of justice and failing to treat the Court with courtesy and respect.

43. The Law Society adduced evidence consisting of social media posts purportedly made by the Member containing allegations of corruption and misconduct by the Court and certain justices. There are several posts in which the Member alleges, without any supporting evidence, that rigged Court proceedings are taking place in "secret". For example, in the posts, reference is made to: "a massive corruption in King's Bench" and that "The Court of King's Bench is a fraud machine." There are also posts referring to specific justices as "criminals", "doing bad stuff", "stupid" and "bought".

44. The Law Society argues that:

- a. by publishing unsupported and intemperate criticism of the Court, the Member failed to encourage public respect for the administration of justice (allegation #3) and
- b. by making unfounded public allegations that the Court and/or its officers were corrupt, the Member failed to treat the Court with courtesy and respect (allegation #4),

the Member is in breach of the following sections of the *Code*:

§ 5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect,

§ 5.1-5 A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings,

§ 5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice,

§ 7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice, and

§ 7.5-1 Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

45. The commentary to section 5.5-1 of the *Code* provides in part that: "[1] ... Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected." The commentary for section 5.5-5 notes that conduct may constitute professional misconduct even if it is not punished by contempt.

46. The commentary to section 5.6-1 of the *Code* is set out in full as follows:

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] Criticizing Tribunals- Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned. [underlining added]

47. The commentary to section 5.6-1 of the *Code* underlies the importance of public trust in the administration of justice. That commentary states that lawyers should take care not to weaken public confidence in legal institutions by irresponsible allegations, in part because judicial institutions will not function effectively unless they command the respect of the public. The commentary also states that lawyers should avoid criticism of courts that is petty, intemperate or unsupported because from the public's perspective, lawyers' professional knowledge lends weight to their comments.

48. The commentary to section 7.2-1 of the *Code* provides in part that:

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence,

conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

49. The commentary to section 7.5-1 of the *Code* provides in part that:

[8] Lawyers should, where possible, encourage public respect for and try to improve the administration of justice. In particular, lawyers should treat fellow practitioners, the courts and tribunals with respect, integrity and courtesy. Lawyers are subject to a separate and higher standard of conduct than that which might incur the sanction of the court.

[9] This rule should not be construed in such a way as to discourage constructive comment or criticism.

50. The Supreme Court of Canada noted in *Doré v Barreau du Québec*, [2012 SCC 12](#), that the public expects a lawyer to endure criticisms and pressure with civility and dignity, which is not easy where the lawyer feels “unfairly provoked”; however, “it is precisely when a lawyer’s equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility” (at para [68](#)). Failure to behave with civility risks undermining public confidence in the justice system (*Law Society of Ontario v Fancy*, [2020 ONLSTH 143](#) at para [37](#)).

51. In *Law Society of Upper Canada v Kimberly Lynne Townley-Smith*, [2010 ONLSHP 0077](#), the Hearing Panel granted an interlocutory suspension partly on the basis the member’s public assertions of corruption in the Ontario courts failed to encourage respect for the administration of justice and treat the courts with fairness, courtesy and respect. In finding the member’s conduct unbecoming, the Hearing Panel stated at [para 34](#):

The Lawyer’s public and persistent assertion that there is widespread corruption in the Superior Courts and other institutions and individuals in Ontario and Manitoba, combined with her repetitive and abusive conduct of litigation poses a risk to the public interest in the administration of justice.

52. There is no dispute regarding whether the social media posts proffered in this matter by the Law Society were published by the Member. The Member confirmed during the November 8, 2024 hearing that the printed copies of the posts tendered as exhibits and marked as Exhibits L7, L8, L9, L10, L15, L16, L17, L18, L19, L20, L21 and L22 were copies of posts made by the Member to his own social media accounts. Upon review, the Committee found the said posts (but for L8) to contain allegations of corruption directed against the Court and some of its justices, along with personal attacks directed at certain justices, which were undoubtedly detrimental and potentially damaging to the confidence of the public in the administration of justice.

53. The Committee finds that the Member’s social media posts alleging corruption in the Court – including that justices can be “bought” and legal proceedings “rigged” – do not engender trust in a fair and impartial justice system or in the administration of justice. Instead, these comments undermine that system.

54. In light of the above, the Member’s allegations of corruption in the Court and among certain justices, which were posted to social media, breach at minimum section 5.1-1 of the *Code*, requiring lawyers to treat courts with respect, and section 5.6-1 of the *Code*, requiring

lawyers to encourage public respect for the administration of justice.

55. The Member adduced no evidence to support any of his criticisms or allegations of corruption by the Court or the justices named in the allegation. Further, the Committee finds the publication of such potentially damaging material to be immoderate and intemperate in respect of the gravity of the allegations, the potential negative impact on the administration of justice and the named justices and the unmeasured means of publication- i.e., on social media.

56. Accordingly, the Committee finds the allegations that the Member failed to encourage public respect for the administration of justice by publishing criticism about the Court that was intemperate and unsupported substantiated.

57. The Committee also finds that the allegation that the Member failed to treat the Court with courtesy and respect by publicly making unfounded allegations that the Court, and its officers, were corrupt is substantiated.

Charter Analysis

58. If the Committee finds that allegations 3, 4 and 5 are proven, there will be an impact on the Member's freedom of expression rights (*College of Physicians and Surgeons of Ontario v Trozzi*, [2023 ONPSDT 22](#) at para [72](#)). Accordingly, prior to reaching a decision on allegations 3, 4 and 5, the Committee must consider subsection 2(b) of the *Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 1* (the "Charter"), which protects freedom of expression rights.

Right to Freedom of Expression

59. The right to freedom of expression is a fundamental right with broad scope. As the Supreme Court of Canada stated in *Edmonton Journal v Alberta (Attorney General)*, [1989 CanLII 20 \(SCC\)](#) at page 1336: "It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression."

60. In *R v Zundel*, [1992 CanLII 75 \(SCC\)](#) at page 752, the Supreme Court of Canada, citing in part *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), explained the purpose of the right being:

to permit free expression to the end of promoting truth, political or social participation, and self-fulfilment...extends to the protection of minority beliefs which the majority regard as wrong or false.

The Court in *Zundel* also confirmed that the deliberate publication of falsehoods is protected by the right, leaving its prejudicial effects to be dealt with in the section 1 analysis (at page 758).

61. In *Doré*, the Supreme Court of Canada identified that the question to be asked by a regulator in assessing whether an adjudicated decision violates the *Charter* is whether the decision-maker has disproportionately, and therefore unreasonably, limited a *Charter* right. The Court further explained at paras [6-7](#):

6 we are looking for whether there is an appropriate balance between rights

and objectives, and the purpose... is to ensure that the rights at issue are not unreasonably limited.

7 ... the nature of the reasonableness analysis is always contingent on its context. In the *Charter* context, the reasonableness analysis is one that centres on proportionality, that is, on ensuring that the decision interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives. If the decision is disproportionately impairing of the guarantee, it is unreasonable. If, on the other hand, it reflects a proper balance of the mandate with *Charter* protection, it is a reasonable one.

62. In *Groia v Law Society of Upper Canada*, 2018 SCC 27, the Supreme Court of Canada stated at para 119:

... Allegations impugning opposing counsel's integrity that lack a reasonable basis lie far from the core values underpinning lawyers' expressive rights. Reasonable criticism advances the interests of justice by holding other players accountable. Unreasonable attacks do quite the opposite. ... such attacks frustrate the interests of justice by undermining trial fairness and public confidence in the justice system. A decision finding a lawyer guilty of professional misconduct for launching unreasonable allegations would therefore be likely to represent a proportionate balancing of the Law Society's mandate and the lawyer's expressive rights.
[underlining added]

63. Notably, in *Groia*, the Supreme Court of Canada endorsed the Appeal Panel's finding of the importance of civility in the legal profession, confirming its importance to avoid eroding "public confidence in the administration of justice" (at paras 63-67). In *Doré*, the Supreme Court of Canada emphasized the importance of professional discipline to prevent incivility in the legal profession (at para 61).

64. Additionally, in *Groia*, the Supreme Court of Canada identified the following guiding factors to be assessed in the determination of reasonableness: (a) what the lawyer said and why the lawyer said it; and (b) the manner and frequency of the lawyer's behaviour. The Court noted that assessing these factors will assist a disciplinary body to gauge the value of the speech at issue, allowing for a decision, both with respect to a finding of professional misconduct and any penalty imposed, that reflects a proportionate balancing of the lawyer's expressive rights and the Law Society's statutory mandate. In this regard, the Court established that the evaluation of "what the lawyer said and why they said it" requires an assessment of whether the statements made by the lawyer were made in good faith. Statements made in bad faith or without a reasonable basis will amount to professional misconduct. Further, the higher the value of the speech, the more likely it will be protected (at paras 83 and 97):

[83] ... in some circumstances, bad faith allegations or allegations that lack a reasonable basis may, on their own, warrant a finding of professional misconduct. However, a law society disciplinary tribunal must always take into account the full panoply of contextual factors particular to an individual case before making that determination. ...

...

[97] ... Allegations of professional misconduct or other challenges to opposing

counsel's integrity must be made in good faith and have a reasonable basis.

65. Regarding the manner and frequency of the impugned conduct in the determination of reasonableness, the Supreme Court of Canada has clarified that: "A single, scathing attack on the integrity of another justice system participant can and has warranted disciplinary action" (*Groia* at para [100](#)).

66. This Committee is also guided by the commentary of the Supreme Court of Canada in *Groia* highlighting that the lawyer's response to instructions from the judge- whether the lawyer moderated their conduct in the face of instructions from the court, or continued to behave inappropriately- may be relevant in the determination of misconduct. The Court recognized that a lawyer who pays heed to being informed that they are approaching or crossing the line is less likely to have engaged in professional misconduct than a lawyer who continues to behave inappropriately (*Groia* at para [110](#)).

Statutory objectives

67. The courts have consistently found that a finding of professional misconduct that engages a lawyer's expressive rights will only be reasonable if it reflects a proportionate balancing of the law society's statutory objective with the lawyer's expressive freedom. (See *Groia*; *Doré* at para [57](#); *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#) at para [39](#).)

68. The overall mandate of the Law Society is to regulate the profession and practice of law in the public interest: *The Legal Profession Act*, 1990, L-10.1 (the "Act"), subsections 3.1(a), (b). The Law Society fulfills an integral part of its mandate by setting and enforcing standards of professional conduct — in this case, civility. Law Society counsel identifies the specific statutory mandate engaged in this matter as the setting and enforcing of standards of professional conduct, with an emphasis on civility as well as the need to encourage respect for the administration of justice.

69. It has been established, and this Committee accepts, that lawyers play a key role in ensuring the accountability and transparency of the judiciary. To continue to effectively fulfil this role in the legal system, lawyers must be permitted to freely express themselves (*Histed v Law Society of Manitoba*, [2007 MBCA 150](#) at para [71](#)). However, it has also been established that protection afforded to communications that are far removed from the core values sought to be protected by subsection 2(b) may be reduced (*Groia* at para [117](#)):

[117] That said, speech is not sacrosanct simply because it is uttered by a lawyer. Certain communications will be far removed from the core values s. 2(b) seeks to protect: the search for truth and the common good: *R. v. Keegstra*, [1990 CanLII 24 \(SCC\)](#), [1990] 3 S.C.R. 697, at pp. 762 and 765. The protection afforded to expressive freedom diminishes the further the speech lies from the core values of s. 2(b): *Keegstra*, at pp. 760-62; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995 CanLII 64 \(SCC\)](#), [1995] 3 S.C.R. 199, at paras. [72-73](#). As such, a finding of professional misconduct is more likely to represent a proportionate balance of the Law Society's statutory objective with the lawyer's expressive rights where the impugned speech lies far from the core values of lawyers' expressive freedom.

Impact

Negative Impact of a Finding of Conduct Unbecoming- Member

70. The Member's speech is protected by the *Charter*. A finding of professional misconduct relating to the Member's communications would impact the Member's right to freedom of expression and may also impact communications by other lawyers regarding the Court.

71. In *Trozzi* the Discipline Tribunal stated at paras 85 and 87:

... A finding of professional misconduct ... would also have a chilling effect on other members who might be deterred from giving expression to their own views ...

...

... Arguably, the impairment on the member's *Charter* rights resulting from a finding of misconduct may be at the lower end of the spectrum, depending on what penalty is imposed. We find that, in balancing the negative effects of a finding of misconduct with the public good achieved, the potential for the most serious penalties in itself creates a chilling effect on the exercise of freedom of expression.

72. Nonetheless, as indicated above, the Supreme Court of Canada has made it clear that not all forms of expression are equally protected (*Groia* at para 119). The courts have also established that a lawyer's speech is not automatically protected only because they are a lawyer (*Keegstra* at pages 762 and 765).

Positive Impact of a Finding of Conduct Unbecoming- Public interest

73. The Member's unsupported allegations regarding the Court are harmful in that they undermine respect for the administration of justice. The public interest and public confidence in the administration of justice are linked: "That which tends to undermine public confidence in the administration of justice will harm the public interest in the administration of justice" (*Law Society of Upper Canada v Jack George McGee*, 2011 ONLSHP 70 at para 45). Further, the January 2024 Email, alleging the recipient's firm was colluding with the Court, was unprofessional and uncivil.

Proportionality

74. The Committee finds that the speech at issue, concerning serious and unsupported allegations of corruption in the judiciary, were made without reasonable basis and are not of high value for the purposes of subsection 2(b) of the *Charter*.

75. Many of the allegations were posted to social media after the Member was suspended in February 2024, and some were in response to the Law Society's communications regarding the Member's practice, suggesting the communications were unrelated to client matters. As such, the allegations at issue cannot be seen as zealous advocacy on a client's behalf. (See, for example, *Groia* at paras 71-73.) While the January 2024 Email raises concerns regarding the recipient's proposed contempt application, which may have advanced the Member's client's interest, it is the allegations of corruption in the January 2024 Email that are

at issue in this matter. In the Committee's view, those allegations crossed the line from resolute advocacy to incivility.

76. The nature of the allegations at issue in this matter are distinguishable from those in *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112, in which the Saskatchewan Court of Appeal concluded Ms. Strom, a nurse, was not guilty of professional misconduct when she posted to social media criticisms of the care her grandfather had received in a health facility. The Court concluded Ms. Strom's posts were entirely personal to her family's care, were made when Ms. Strom was "off-duty" on leave and were not exaggerated, false or overstated. This contrasts with the present case, in which the Member's communications were unsupported, insulting and made within his professional sphere. Further, in *Strom*, those that were criticized in Ms. Strom's posts were able to defend themselves on social media and elsewhere. That is not the case here, where the Court and its justices are not permitted to respond to the Member's allegations.

77. Further, the Member continued to advance the allegations on social media even after being advised in the Law Society Letter that a new complaint had been opened in respect of the January 2024 Email. In fact, after receiving that letter, the Member posted the January 2024 Email to X along with the Law Society Letter. During the November 8, 2024 hearing, Ms. P. testified that the post containing the January 2024 Email had not been removed from X and had over 1,600 views at the time.

78. In the Committee's assessment of impact, it is of the view that a finding of professional misconduct in respect of allegations 3 and 4 in this matter would not impair the Member's right to engage in debate regarding the operations of the Court, but would impair his ability to make allegations against the Court, its justices and fellow colleagues that are unsupported and misleading.

79. With respect to proportionality, the Committee is of the view that a finding of professional misconduct arising from the allegations in this matter would advance the Law Society's statutory objective to regulate the profession in the public interest, by promoting respect for the administration of justice without impairing the Member's freedom of expression more than necessary, to achieve the objectives of maintaining public respect in the administration of justice and requiring members to act with civility and respect.

80. To conclude on the Member's freedom of expression rights engaged in allegations 3 and 4, in the Committee's assessment the Committee is of the view that the balancing exercise in relation to these allegations favours limiting the Member's freedom of expression and holding him accountable for the harm inherent in the comments that he has made.

81. Accordingly, the Committee confirms its finding of misconduct with respect to the allegations that the Member undermined public respect for the administration of justice and failed to treat the Court with courtesy and respect.

Allegation 5: Failing to be courteous to a fellow Law Society member.

82. On January 3, 2024, the Law Society became aware that on January 2, 2024, the Member sent the January 2024 Email to another lawyer (S.M.), the substance of which was as follows:

A contempt application. Your client wants to put the mother of his child behind bars.

That would be the second contempt application I have dealt with involving your firm in the past year. Both involving family members.

Because a few firms, yours included, know that some judges are for sale. Including the Chief Justice, who makes sure to schedule the corrupt judges at these contempt applications and other rigged proceedings.

I think most of the judges are honest. There are only a few corrupt ones. But the Chief Justice ensures that the corrupt ones sit at the right times.

To hell with that. If you want to try to lock up any more of my clients, you had better put me in jail first.

Thank you,

83. The Law Society argues that in sending the January 2024 Email to S.M. alleging their firm was engaged in corruption, the Member failed to be courteous and civil and act in good faith towards a fellow member of the Law Society, contrary to section 7.2-4 of the *Code*, which provides:

A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

Section 7.2-4 of the *Code* contains no commentary.

84. In *Law Society of Saskatchewan v Blenner-Hassett*, [2018 SKLSS 6](#), the Hearing Committee found the Member breached both sections 7.2-1 and 7.2-4 of the *Code* where he sent three communications in a criminal proceeding to the prosecutor containing innuendo (e.g., referring to the police as “your police officers”) and accusations and misstatements (e.g., suggesting the officers were under the prosecutor’s supervision at the relevant time). The Hearing Committee found the communications were intemperate in tone and unnecessary personal attacks on a fellow member (at para 25).

85. In *Law Society of Alberta v Pozniak*, [2002] LSDD No 55 (QL), the Hearing Committee found the member had breached the section of the applicable *Code of Professional Conduct* requiring lawyers to be “fair, accurate, and courteous” in their dealings with other counsel, where the member told a fellow member on one occasion that he was “clueless”. In reaching this decision, the Hearing Committee stated at paras 17-18:

Civility between counsel is not a trivial matter. Indeed it goes to the heart of professionalism and is essential to maintain the general reputation and integrity of the legal profession. Lawyers, on behalf of clients, must face adversity on a daily basis but this does not justify a descent into incivility. Indeed, quite the contrary...

In the result, the Committee concluded that the gratuitous insult in this instance was discourteous and was conduct deserving of sanction. This was behaviour that a self-regulating profession can not condone because this type of behaviour seriously undermines the integrity of the profession. Having said that, the degree to which the

behaviour crossed the line in this case was minimal.

86. The Committee accepts that the January 2024 Email was authored and sent to S.M. by the Member, based on the sender's email address and the Member's admission at the November 8, 2024 hearing that he was responsible for the referenced social media posts.

87. It is the Committee's view that the statement in the January 2024 Email to the effect that the recipient's firm "know[s] that some judges are for sale", was an insinuation that the firm of S.M. engaged in bribing judges or other such conduct, and that the recipient's firm would do so for the contempt application referenced in that email. The Member did not provide any basis for this innuendo and he did not deny having sent the email to S.M.

88. The Committee finds the unsupported insinuation of corruption against S.M.'s firm to be offensive and made in bad faith and is of the view that such communication is unprofessional and contrary to section 7.2-4 of the *Code*. The Committee thus finds that the allegation that the Member failed to be courteous and civil and act in good faith towards a fellow member of the Law Society in that he made ill-considered comments to her alleging that her firm was engaged in corruption is substantiated.

89. With respect to the freedom of expression rights of the Member engaged by this finding, having concluded that the allegations made by the Member were made without any reasonable basis and unsupported, the Committee finds these statements to be of low value and not constructive and concludes that the Member's publication does not reflect the core values underpinning lawyers' expressive rights. The Committee notes that even though the posting of the allegation on the Member's X account may have been a one-off event, as long as the content remained on the Member's account, it was essentially being aired.

90. The Committee thus finds that the balancing exercise in this instance favours limiting the Member's freedom of expression and holding him accountable for the harm inherent in the comments he has made, and the Committee confirms its finding of misconduct with respect to the allegation that the Member failed to be courteous to a fellow Law Society member.

Allegation 6: Failing to treat the Court with courtesy and respect and violating rule 9-33 and Practice Directive #10.

91. The evidence before the Committee is that on January 12, 2024, the Member posted to his X account part of a Fiat issued by the Court (per Mills, J) on January 11, 2024 ("Fiat") in a court file concerning a hearing that took place on December 19, 2023 (the "December Hearing"), along with excerpts of a hearing transcript. The first page of the Fiat shows the Member as counsel for the defendants. The transcript excerpts reference the Member, Justice Mills and counsel for the plaintiffs, whose name also appears on the first page of the Fiat.

92. On January 17, 2024, the transcript excerpts were posted to an Instagram account bearing the Member's name "Davin Burlingham".

93. By letter dated January 17, 2024, which was copied to the Law Society, the Court's Executive Legal Officer advised the Member they had recently learned that the Member "may have surreptitiously recorded" a Chambers hearing and "published, distributed or broadcast the recording and transcripts" in several ways, including by email and on X. The letter further advised that these actions were contrary to the Court's Rules of Practice and Procedure, the Court's Practice Directive concerning audio recording and broadcasting and the

Saskatchewan Law Courts' policy concerning electronic and wireless devices, which prohibit recording court proceedings without permission. The said audio recordings (referenced above as the Recordings) apparently used to produce the above-noted transcript excerpts were provided to the Law Society by the said Executive Legal Officer.

94. The Recordings were played for the Committee. The Law Society submits that it is more likely than not that the Member made the Recordings himself for the following reasons: the Member provided a copy of the Recordings to the Executive Legal Officer; the Member is the only person who can be heard clearly on the Recordings suggesting that the recording device (possibly a smartphone) must have been on the Member or very near to the Member while he was making his submissions; during the hearing, the Member was sitting at the counsel table whereas his client was in the gallery; and the Member stated in his April 9, 2024 posts to social media, with reference to the December Hearing that: "I have a recording of it". The Law Society further asserts that any smartphone would have the capability of making the Recordings.

95. The Committee accepts the submissions of the Law Society and finds that on the balance of probabilities, the Member recorded or caused the unauthorised recording of the December Hearing. The Committee also accepts the evidence of the Law Society and the Member's assertion to the effect that the transcript excerpt of the Recordings was posted by the Member to his X account.

96. It is the argument of the Law Society that the Member was required to have knowledge of the relevant rules and practice directives, including the prohibition on recording court proceedings and that in making the Recordings, the Member has violated the Court's Rules of Practice and Procedure and Practice Directive prohibiting the recording of proceedings. The Law Society submits that in making the Recordings and flaunting having done so by publishing transcripts to social media, the Member has failed to treat the Court with courtesy and respect.

97. King's Bench Rule 9-33 provides:

No person shall record by any device, machine or system the proceedings of any Court or chambers:

- (a) without leave of the presiding judge; and
- (b) except as provided by *The Evidence Act* or any order issued pursuant to that Act.

98. Court of King's Bench Practice Directive #10 (GA-PD NO. 10) provides in part:

Except as authorized, the audio/video recording or broadcasting of court proceedings, portions thereof or ceremonies within courtrooms or of people or events within court houses is prohibited.

99. This Committee finds it noteworthy that other professionals such as journalists are governed by and mandated to follow the rules and procedures set for the recording of Court proceedings. The Committee is of the view that more so as counsel appearing in the Court, the Member was required to have knowledge of the relevant rules and practice directives including the prohibition on recording court proceedings.

100. As discussed above, section 5.1-1 of the *Code* requires lawyers to treat courts with

respect. Section 5.1-5 of the *Code* requires lawyers to be courteous and civil and act in good faith to the tribunal. The commentary to section 5.1-1 *Code* states that maintaining dignity, decorum and courtesy in the courtroom promotes order in the courtroom, which allows for the protection of rights. The commentary to section 5.1-5 of the *Code* provides that treating the tribunal with courtesy and respect promotes “the parties’ right to a fair hearing in which justice can be done.” (The definition of “tribunal” in the *Code* at section 1.1-1 includes the Court.)

101. It is the conclusion of the Committee that the surreptitious recording of the Court proceeding (i.e., the December Hearing) in this matter was made by the Member in violation of the prohibition in Court of King’s Bench Rule 9-33 and Court of King’s Bench Practice Directive #10. The Committee further finds the actions of the Member in posting transcript excerpts of the unauthorised recording to his social media disrespectful to the Court in that the post essentially flaunts the unauthorised recording. Accordingly, the Committee finds that the allegation that the Member failed to treat the Court with courtesy and respect by, without authorization, surreptitiously recording, or causing the surreptitious recording of, court proceedings in violation of Court of King’s Bench Rule 9-33 and Court of King’s Bench Practice Directive #10 is substantiated.

Allegations 7 and 8: Failing to treat the Court with courtesy and respect and failing to perform all legal services undertaken on behalf of his client in a competent manner.

102. These allegations are supported by the Fiat of Justice Mills referenced above (para 91) indicating that during the December Hearing, the Member had a long and apparently heated argument with the Justice during which the Member was asked to sit down several times so that the Justice could hear from opposing counsel. After 2-3 minutes, the Member stated that he was leaving. The Member then left counsel table while the hearing was still ongoing and sat in the gallery with his client, later leaving the courtroom with his client without returning.

103. With respect to allegation 7, the Law Society submits that in leaving the courtroom in the middle of the hearing and not returning, the Member did not treat the Court with courtesy and respect, as is required by sections 5.1-1 and 5.1-5 of the *Code* (cited above).

104. Regarding allegation 8, the Law Society submits that the actions of the Member in leaving the courtroom while the hearing was ongoing was not reflective of serving one’s client in a competent manner and submits further that the Member’s actions were contrary to the spirit and intent of the *Code*, to ensure that lawyers are providing competent and high- quality service to clients.

105. Section 3.1-2 of the *Code* requires a lawyer to perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer. The commentary to that section provides in part that:

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

106. This Committee finds no basis to reject the Fiat evidence tendered by the Law Society in support of this allegation particularly considering that the Member has not opposed the admitting of the Fiat into evidence, has not denied any of the facts establishing this allegation

and has claimed responsibility for posting material to social media purportedly confirming that the alleged acts took place (e.g., “I walked out of the courtroom”).

107. In *Goldberg, Re*, [2005 LSBC 10](#), a majority of the Law Society of British Columbia Panel concluded that a lawyer who left court after his adjournment request was denied breached his duty to his client and was discourteous and disrespectful of the court, which was contrary to the applicable Professional Conduct Handbook (at paras [69](#) and [76](#)). In its decision, the Panel addressed the lawyer’s complaint regarding judicial conduct at para [79](#) as follows:

The Panel notes that the conduct of Judges is not for the Law Society of British Columbia to control. The Law Society’s obligation and function is to regulate members, in the public interest. Many of the Law Society’s Canons relate to appropriate conduct in stressful situations. It is important that lawyers act in a restrained and appropriate manner. This includes Court settings where lawyers may not agree with judicial decisions. It is wise to remind ourselves that if we don’t agree with a particular judicial ruling, we have avenues to challenge and possibly to reverse or rectify that decision, among them, the Supreme Court, Court of Appeal, Judicial Council, and the Law Society/Judiciary complaints process. Walking out of a Courtroom is not one of them.

108. In line with the above case, the Committee finds that in leaving the courtroom during the December Hearing, the Member’s action was discourteous and disrespectful to the Court, and constitutes a violation of sections 5.1-1 and 5.1-5 of the *Code*. Accordingly, the Committee finds the allegation that the Member failed to treat the Court with courtesy and respect on December 19, 2023, when, during a court proceeding acting on behalf of his clients ATD and T.M., he left the courtroom in the middle of the proceeding and did not return, to be substantiated.

109. As for Allegation 8, the Committee notes that in representing his client completely, the Member would have been expected to be present in court to hear, answer to and address issues on behalf of his client when the matter was before the judge. In leaving the court room in the middle of the proceeding and not returning, the Committee finds that the Member’s actions potentially denied his client full and competent representation during the proceedings on December 19, 2023.

110. The Committee therefore aligns with the *Goldberg* decision and finds that the actions of the Member in leaving the courtroom without completing the hearing constitute a breach of the Member’s duty to his client and violate of section 3.1-2 of the *Code*.

Allegation 9: Conducting himself in a manner that is ungovernable.

111. The Law Society submits that a finding of ungovernability can be made in the context of a first offence, if the conduct in question sends a clear message that the lawyer does not intend to submit to ongoing regulation.

112. Relevant case law on ungovernability includes *College of Physicians and Surgeons of Ontario v Sweet*, [2017 ONCPSD 40](#), where the Discipline Committee applied the concept of “ungovernability” and explained, at page 17, that ungovernability:

...includes a pattern of conduct that demonstrates that the member is unprepared to

recognize his or her professional obligations and the regulator's role. It does not just relate to the serious nature of a prior disciplinary record; rather, it occurs when the member's present attitude to his or her governing body makes it clear that the member is unlikely to cooperate with the College in the future.

113. In *Law Society of Upper Canada v Timothy David Salomaa*, [2001 CanLII 61376 \(ONLST\)](#), the panel made similar comments at paras [22](#) and [28](#) as follows:

"There is no fixed definition of ungovernability. The scope of behaviour that qualifies as ungovernability is limitless. It is not a tangible concept. Rather it is a concept that has evolved over the last 10 yrs through various decisions...

...

The Law Society exists to govern the profession in the public interest. If lawyers will not abide by the authority of the Law Society, and demonstrate that they abide by that authority, the Law Society cannot fulfill its mandate. That is the essence of what governability means."

114. In *Law Society of Upper Canada v Zygmunt John Fenik*, [2005 ONLSHP 25](#), the Hearing Panel referenced at para [84](#) the following non-exhaustive list of factors in relation to considering whether a member was ungovernable:

- (a) the nature, duration and repetitive character of the misconduct,
- (b) any prior discipline history,
- (c) any character evidence,
- (d) the existence or lack of remorse. Remorse includes a recognition and understanding of the seriousness of the misconduct,
- (e) the degree of willingness to be governed by the Society,
- (f) medical or other evidence that explains (though does not excuse) the misconduct,
- (g) the likelihood of future misconduct, having regard to any treatment being undertaken, or other remedial efforts, and
- (h) the member's ongoing co-operation with the Society in addressing the outstanding matters that are the subject of the misconduct.

115. In the present matter, Law Society counsel argues that the Member has demonstrated several of the earmarks of ungovernability listed in *Fenik*, citing the Member's social media posts, unfounded allegations of corruption within the Court and among Saskatchewan's larger firms and noting that the Member has refused to remove the posts. The Law Society submits that the unfounded and unsupported posts by the Member harm the administration of justice every time they are viewed. The Law Society further submits that it is charged with regulating its members in the public interest and that members who reject or fail to respond to this regulation cannot continue to be lawyers.

116. Law Society counsel further references instances where the Member rejected recommendations designed to improve his practice and attempts to address certain elements of his conduct in a non-disciplinary manner. Counsel also references the Law Society Letter where the Member was confronted with a variety of concerns in relation to his conduct, including the January 2024 Email and, instead of heeding the caution about his conduct, he made the allegations public, repeating the allegations in different ways on his social media

platforms, even after he was suspended. Finally, the Law Society asserts that the Member has indicated clearly that he does not want to be a lawyer anymore and has invited the Law Society to disbar him.

117. The Law Society's submission to the Committee is that the Member has rejected the Law Society's efforts to regulate him and has become ungovernable.

118. The Committee accepts the evidence tendered by the Law Society and finds that the Member has not demonstrated a willingness to comply with instructions from the Law Society. The Committee further finds that when the Law Society found the Member to be in error and provided him the opportunity to review and assess his conduct and course-correct, the Member was not receptive. Additionally, the Committee notes the Member's statements during these proceedings confirming that he does not wish to continue to be a member of the Law Society. The Committee concludes that in his actions and in his speech, the Member has demonstrated an unwillingness to be governed by the Law Society and thus finds the allegation that the Member conducted himself in a manner that is ungovernable to be substantiated.

DECISION

119. Based on the above analysis, the Committee finds Davin Burlingham guilty of conduct unbecoming a lawyer in respect of allegations 2-7 in this matter in that he:

- (1) Failed to reply promptly and completely to communications from the Law Society of Saskatchewan;
- (2) Failed to encourage public respect for the administration of justice by publishing criticism about the Saskatchewan Court of King's Bench that was intemperate and unsupported;
- (3) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by publicly making unfounded allegations that the court, and or its officers, were corrupt;
- (4) Failed to be courteous and civil and act in good faith towards a fellow member of the Law Society of Saskatchewan, S.M., in that he made ill-considered comments to her alleging that her firm was engaged in corruption;
- (5) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by, without authorization, surreptitiously recording, or causing the surreptitious recording of, court proceedings in violation of Court of King's Bench Rule 9-33 and Court of King's Bench Practice Directive #10;
- (6) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect on December 19, 2023, when, during a court proceeding acting on behalf of his clients ATD and T.M., he left the courtroom in the middle of the proceeding and did not return;
- (7) Failed to perform all legal services undertaken on behalf of his clients ATD and T.M., in a competent manner; and

- (8) Conducted himself in a manner that is ungovernable.

DATED this 11th day of March 2025 at Melfort, Saskatchewan.

Per: "Foluke Laosebikan, K.C."

Per: "Melissa Nicolls"

Per: "Len Daniels"

CORRIGENDUM

A typographical issue has been noted in paragraph 119 of this decision which refers in error to allegations 2-7 instead of allegations 2-9. This typographical error is corrected and highlighted in the bold and italicized portion of paragraph 119 below.

119. Based on the above analysis, the Committee finds Davin Burlingham guilty of conduct unbecoming a lawyer in respect of ***allegations 2-9*** in this matter in that he:
- (2) Failed to reply promptly and completely to communications from the Law Society of Saskatchewan;
 - (3) Failed to encourage public respect for the administration of justice by publishing criticism about the Saskatchewan Court of King's Bench that was intemperate and unsupported;
 - (4) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by publicly making unfounded allegations that the court, and or its officers, were corrupt;
 - (5) Failed to be courteous and civil and act in good faith towards a fellow member of the Law Society of Saskatchewan, S.M., in that he made ill-considered comments to her alleging that her firm was engaged in corruption;
 - (6) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by, without authorization, surreptitiously recording, or causing the surreptitious recording of, court proceedings in violation of Court of King's Bench Rule 9-33 and Court of King's Bench Practice Directive #10;
 - (7) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect on December 19, 2023, when, during a court proceeding acting on behalf of his clients ATD and T.M., he left the courtroom in the middle of the proceeding and did not return;
 - (8) Failed to perform all legal services undertaken on behalf of his clients ATD and T.M., in a competent manner; and
 - (9) Conducted himself in a manner that is ungovernable.

DATED this 11th day of March 2025 at Melfort, Saskatchewan.

Per: "I concur"
 Foluke Laosebikan, K.C.

Per: "I concur"
 Melissa Nicolls

Per: "I concur"
 Len Daniels

Corrigendum dated March 11, 2025

**PENALTY DECISION OF THE HEARING COMMITTEE FOR THE
 LAW SOCIETY OF SASKATCHEWAN**

INTRODUCTION

1. On November 8, 2024, and on January 23, 2025, a Hearing Committee of the Law Society of Saskatchewan convened virtually via MS Teams to hear and determine a formal complaint into the conduct of Davin Burlingham (the "Member") with respect to allegations that he was guilty of conduct unbecoming a lawyer in that he:

- (1) Failed to perform all legal services undertaken on behalf of his client, N.B., in a competent manner;
- (2) Failed to reply promptly and completely to communications from the Law Society of Saskatchewan;
- (3) Failed to encourage public respect for the administration of justice by publishing criticism about the Saskatchewan Court of King's Bench that was intemperate and unsupported;
- (4) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by publicly making unfounded allegations that the court, and or its officers, were corrupt;
- (5) Failed to be courteous and civil and act in good faith towards a fellow member of the Law Society of Saskatchewan, S.M., in that he made ill-considered comments to her alleging that her firm was engaged in corruption;
- (6) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect by, without authorization, surreptitiously recording, or causing the surreptitious recording of, court proceedings in violation of Court of King's Bench Rule 9-33 and Court of King's Bench Practice Directive #10;
- (7) Failed to treat the Saskatchewan Court of King's Bench with courtesy and respect on December 19, 2023, when, during a court proceeding acting on behalf of his clients ATD and T.M., he left the courtroom in the middle of the proceeding and did not return;

- (8) Failed to perform all legal services undertaken on behalf of his clients ATD and T.M., in a competent manner; and
- (9) Conducted himself in a manner that is ungovernable.

2. At the hearing, allegation (1) was adjourned *sine die* at the request of counsel for the Law Society, and allegations (2) - (9) were pursued.

3. In a written decision of the Hearing Committee dated March 11, 2025 and corrigendum dated March 21, 2025, the Committee found Davin Burlingham guilty of conduct unbecoming a lawyer in respect of allegations (2) - (9).

4. On May 2, 2025, the Committee re-convened to hear submissions from the Law Society and the Member regarding the penalty with respect to the Committee's finding of misconduct. Prior to the Penalty Hearing date, the Law Society filed written submissions on penalty arguing that the appropriate penalty for the member's misconduct is disbarment and seeking costs of the hearing in the amount of \$19,607.50 as set out in their Statement of Costs, also filed.

5. No written submissions on penalty were received from the Member and he did not appear for the Penalty Hearing. As at the January 23, 2025 Hearing, the Committee adjourned the Penalty Hearing for 15 minutes during which time a Law Society representative sent an email to the Member. There was no immediate response from the Member. The Committee ruled to proceed in the Member's absence noting that the Member was aware of the hearing date and that the information and links required to access the Hearing had been sent by the Law Society to the Member at the same email address at which the Member had received previous correspondence.

6. Approximately an hour into the proceedings, the Chair of the Hearing Committee and counsel for the Law Society each received an email presumably from the Member with the following text: "*Peace guys, lemme know if you ever need to book a music act.*"

A separate box in the same email communication held the following message:

*"So leave a message, this is monitored sporadically
I am with my baby in our parallel reality
Whispering "The sky may fall but justice shall be done"
Her lies may be ignoble but they're sure a lot of fun".*

7. In the assessment and determination of appropriate sanctions, the Hearing Committee considered the submissions on penalty filed in this matter, the information and submissions provided at the previous Hearing sessions and the relevant law.

THE LAW ON SANCTION

8. The *Law Society of Saskatchewan Rules*, Rule 1131 sets out the authority of the Hearing Committee to impose a penalty in the context of a hearing where a finding of conduct unbecoming has been made, as follows:

Law Society of Saskatchewan Rule 1131

"(1) This Rule applies if the Hearing Committee makes a finding of conduct unbecoming with respect to a Formal Complaint.

(2) The Hearing Committee:

- (a) may consider any relevant information respecting the member's professional conduct history; and
- (b) shall invite Discipline Counsel and the member to make submissions as to penalty.

(3) The Hearing Committee may, by order, do one or more of the following:

- (a) assess any penalties or impose any requirements that it considers appropriate, including but not limited to:
 - (i) directing that the member be disbarred and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement;
 - (ii) suspending the member from practice for a specified period until specified requirements are met, including requirements that the member:
 - (A) successfully complete specified courses;
 - (B) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (iii) specifying conditions under which the member may continue to practice, including conditions that the member:
 - (A) not do specified types of work;
 - (B) successfully complete specified classes;
 - (C) not have exclusive control of the member's Trust account;
 - (D) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (E) practise only as a partner with, or as an associate or employee of one, or more members that the Committee may specify;
 - (iv) imposing a fine in any amount that the Committee may specify;
 - (v) requiring the member to pay restitution, in any amount that the Committee may specify, to any aggrieved party;
 - (vi) requiring the member to pay costs of the inquiry calculated in accordance with Rule 1135;
 - (vii) reprimanding the member;
 - (viii) permitting the member to resign from the Society;
- (b) if the Formal Complaint relates to the transfer of identified property or funds in an ascertainable amount, require the member to transfer the property or the amount to the rightful owner;
- (c) make any other direction or set any additional requirement that the Committee considers appropriate.

(4) In addition to a decision made pursuant to subrule (3), the Hearing Committee may order that, if a member fails to make payment in accordance with an order made pursuant to subclause (3)(a)(iv) or (v), the member be suspended from practice.

(5) When the Hearing Committee makes an order pursuant to this section, the Hearing Committee shall:

- (a) specify the penalty assessed or requirement imposed in its decision pursuant to subrule (3);
- (b) send the following to the member:
 - (i) a copy of the Committee's decision; and
 - (ii) a notice of the penalty assessed, or requirement imposed; and
- (c) send a notice of the penalty assessed or requirement imposed to the complainant, if any, and may send a notice of the penalty assessed or requirement imposed to any other person that the Hearing Committee considers advisable;
- (d) if it imposes a fine, fix the date by which payment to the Society shall be completed;
- (e) if it imposes costs, fix the date by which payment to the Society shall be completed;

- (f) if it imposes a requirement, fix the date by which the requirement shall be fulfilled; and
 (g) if it imposes restitution, fix the date by which restitution shall be paid.”

9. *The Legal Profession Act*, 1990, L-10 is the governing legislation of the Law Society of Saskatchewan.

S.3.1 of the Act provides that the Law Society’s mandate is “to act in the public interest.... and to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members”.

Further, S.3.2 of the *Legal Profession Act* provides:

“In any exercise of the society’s powers or discharge of its responsibilities or in any proceeding pursuant to this Act, the protection of the public and ethical and competent practice take priority over the interests of the member.”

10. In *Law Society of Upper Canada v. Kimberly Lynne Townley-Smith*, 2012 ONLSHP 0154 where a lawyer had criticized the justice system and expressed unsubstantiated attacks against the judiciary, the lawyer was found guilty of professional misconduct. In that case as in the instant case, the lawyer did not appear at the hearing and hearing proceeded in her absence after attempts had been made to reach the lawyer. In their decision, the Hearing Panel noted that the lawyer had not introduced any evidence to support any of her allegations and in their view, she had “shown complete contempt for and a total disregard for the entire judicial process”. Even though a finding of ungovernability was not formally made in that case, the Hearing Panel ruled to revoke the lawyer’s license. In *Law Society of Upper Canada v. Coady* where a lawyer made unsubstantiated and intemperate attacks on the judiciary, a finding of ungovernability was made in relation to her conduct and her license was revoked.

APPROPRIATE SANCTION

11. In the instant case, the Hearing Committee is of the view that the finding of ungovernability is central, encompassing all other individual findings of conduct unbecoming. Further, the Committee is convinced that ungovernability is incompatible with continued membership in the Law Society of Saskatchewan and that a lawyer who is unwilling to be regulated poses considerable risk to the public. Accordingly, and as explained further below, the Committee is of the view that the removal of the Member from the profession via disbarment is appropriate in the circumstances. Under Rule 1131(3(a)(i), the Committee may disbar a member and set the period, not exceeding five years, during which the member may not apply for reinstatement. Considering the factors discussed below, the Committee concludes that the Member may apply for reinstatement after two years.

12. In *College of Physicians and Surgeons of Ontario v. Trozzi*, 2024 ONPSDT 2 where the professional misconduct proceedings involved the freedom of expression rights of a medical professional, the Hearing Panel observed that it was required to apply a proportionality analysis, balancing the “severity of the interference of the Charter protection with the statutory objectives.” (cf *Doré v. Barreau du Québec*, 2012 SCC 12 at para. 56); and noted further that the proportionality analysis would apply both at the stage of making a finding of misconduct and at the penalty stage (cf *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 at para. 147).

13. In deciding the instant case, this Hearing Committee holds itself bound to consider relevant *Charter* values, whether the Member makes a *Charter* argument or does not. In our

decision dated March 11, 2025, the Committee in its proportionality analysis was satisfied that considering the statutory objectives, a finding of professional misconduct was a proportionate response relative to the impact on the registrant's freedom of expression. With respect to the decision on penalty, this Committee finds the protection of the public to be the paramount statutory objective in fulfilling the Law Society's responsibility to regulate the legal profession in the public interest. The Committee is therefore satisfied that when placed on the balance, the statutory objective achieved by the disbarment of a Member who does not wish to be regulated by the Law Society- for the protection of the public- outweighs any limitations on the Member's *Charter* rights.

OTHER REASONABLE ALTERNATIVES

14. In considering whether a penalty other than disbarment would give effect to the Member's *Charter* rights while still achieving public protection objectives, this Committee notes that throughout the proceedings, the Member has not disputed or resisted disbarment; instead he has invited disbarment as referenced in our decision of March 11, 2025. The Committee also notes that despite being invited to make submissions on penalty, the Member has made no formal submissions on an appropriate penalty or on terms, conditions or limitations that might protect the public. Neither party has provided any basis for a finding that a suspension accompanied by terms, conditions or limitations could achieve the purposes of a penalty order in this case. As such, the evidence and information before us does not convince us that suspension of the Member with terms, conditions or limitations, will lead the Member to willingly accept the authority of the Law Society. The Committee therefore finds no other reasonable option than disbarment, that would give effect to *Charter* protections more fully, while fulfilling statutory objectives.

15. The Hearing Committee considered the following general factors in the determination of the appropriate sanction:

- (a) The protection of the public and the need to maintain the public's confidence in the integrity of the profession.
- (b) Deterrence- specific deterrence of the Member who is the subject of these proceedings and general deterrence of other lawyers and Law Society Members.
- (c) Denunciation of the impugned conduct.
- (d) Mitigating factors and aggravating factors.

MITIGATING FACTORS AND AGGRAVATING FACTORS

16. The Committee accepts as a mitigating factor the fact that the Member has no prior discipline history. Additionally, given that the timing of the Member's actions that led to the finding of misconduct may have overlapped with the loss of the Member's mother, the Committee considered the possibility of the Member's conduct being trauma-related. However, neither the Member nor the Law Society raised this issue. As such, the Committee did not have sufficient information to make a concrete determination on it. Nevertheless, this Hearing Committee finds it appropriate to acknowledge that mental health challenges can play a role in instances of professional misconduct and is of the view that in such instances, the rehabilitation and wellness of the Member should be a consideration in the determination of the appropriate sanction.

17. The Law Society lists the following aggravating factors:

- a. The Member has not acknowledged the misconduct and has taken no steps to redress the wrong.
- b. The conduct has been continuous since February 2024. The Member has repeatedly doubled-down by posting additional conspiracy theories about the judiciary, all the while failing to disclose a credible basis for his views.

- c. The gravity of the misconduct is significant. The Member's actions are harmful to the administration of justice. His rejection of regulatory oversight renders him unable to practice law safely.
- d. The Member appears unlikely to rehabilitate.
- e. The Member's conduct has a significant impact on the public's confidence in the profession and undermines the ability of the legal system to function properly.
- f. All of the conduct in question was fully intentional.

18. In determining the weight to be assigned to the fact that the Member has no prior history of misconduct, the Committee notes the decision in *College of Physicians and Surgeons of Ontario v. Kadri*, 2023 ONPSDT 15, where a medical professional who did not have a prior discipline history was found ungovernable. The Hearing Tribunal in that case found that the seriousness of the misconduct combined with the absence of any insight that could serve as the foundation for remediation, warranted revocation of the professional's license. The Committee finds this case instructive and does not find the mitigating factor here- of the Member's lack of prior discipline history- to be determinative. The Committee nonetheless accords some weight to the fact that the Member has no prior history of misconduct. The weight accorded is reflected in providing the member the opportunity to reapply for reinstatement after two years rather than a possible 5-year period of exclusion from applying for reinstatement.

19. Regarding aggravating factors, in *Trozzi*, recognizing the entitlement of the professional to stand by and defend their actions without being penalised for doing so, the Hearing Panel affirmed that factors such as lack of evidence of remorse and/or the absence of evidence of remediation efforts, do not support a more severe penalty (at para 17). Accordingly, this Committee does not accord any weight to the Member's lack of acknowledgment of, and lack of redress for, the misconduct in this case. This Committee however considers the gravity of the conduct; the repetition of the conduct; the Member's rejection of oversight; the unlikelihood of rehabilitation assessed in relation to the Member's conduct in this matter; the seriousness of the impact on the public's confidence; and the undeniable intentionality on the part of the Member to be weightier individual considerations.

20. In the Committee's view, given the combination of the aggravating factors and the mitigating factors cited above, a penalty of disbarment for a limited time would achieve the important statutory objectives of maintaining public confidence in the profession, enhancing the Law Society's ability to regulate in the public interest and promoting protection of the public by serving as a deterrent to the Member and others. The Committee consequently concludes that the Member may apply for reinstatement after two years, given a possible maximum of five years of disbarment.

COSTS

21. Counsel for the Law Society has submitted a Statement of Costs in the amount of \$19,607.50. The Member has not made submissions on his liability for costs, nor does he dispute the costs outlined in the filed Statement of Costs. The Hearing Committee finds the costs sought by the Law Society Counsel in this matter to be in order and reasonable and accordingly, approves total costs in the amount of \$19,607. 50 in favour of the Law Society.

DECISION

22. The Hearing Committee decides as follows:

i. Davin Burlingham shall be disbarred for a period of two years from the date of the Penalty Hearing (May 2, 2025) and shall not be eligible to apply for reinstatement until after May 1, 2027; and

ii. Davin Burlingham shall pay costs in the amount of \$19,607.50 to the Law Society of Saskatchewan, said payment to be completed no later than December 12, 2025, being 6 months from the date of this decision. If there is undue hardship to the Member affecting the timely completion of payment of the approved costs, the Member may request and the Law Society may in its sole discretion approve such extension of time as it deems appropriate for the Member to complete payment of said approved costs.

DATED this 13th day of June 2025 at Melfort, Saskatchewan.

Per: "Foluke Laosebikan, K.C."

Per: "Melissa Nicolls"

Per: "Len Daniels"

CORRIGENDUM

(1) Paragraph 22.i of the decision of the Hearing Committee dated June 13th 2025 provides: "i. Davin Burlingham shall be disbarred **for a period of two years from the date of the Penalty Hearing (May 2, 2025)** and shall not be eligible to apply for reinstatement until after May 1, 2027; ..."

(italics and bold lettering added to highlight relevant text)

(2) The Committee notes that the penalty stipulated in the said paragraph 22.i of its June 13th 2025 decision is issued pursuant to Rule 1131 (3) (a) (i) of the *Law Society of Saskatchewan Rules* which provides that if the Hearing Committee makes a finding of conduct unbecoming with respect to a Formal Complaint,

"(3) The Hearing Committee may, by order, do one or more of the following:

(a) assess any penalties or impose any requirements that it considers appropriate, including but not limited to:

(i) directing that the member be disbarred and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement; ..."

(3) The Committee further notes that Rule 1131 (3) (a) (i) of the *Law Society of Saskatchewan Rules* does not stipulate that a term or duration be set for disbarment pursuant to this rule.

(4) It has been noted that the wording of paragraph 22.i of the June 13th, 2025, appears to stipulate a duration for the disbarment issued in this matter.

(5) To clarify the intention of the Hearing Committee and to ensure conformity with Rule 1131(3) (a) (i) of the *Law Society of Saskatchewan Rules*, the decision of this Committee dated

June 13th, 2025, is hereby amended by deleting from paragraph 22.i the following phrase:

"... for a period of two years from the date of the Penalty Hearing (May 2, 2025) ..."

(6) Accordingly, paragraph 22.i of the penalty Decision dated June 13, 2025, in this matter is amended to read as follows:

"Decision

22. The Hearing Committee decides as follows:

i. Davin Burlingham shall be disbarred and shall not be eligible to apply for reinstatement until after May 1, 2027; and"

Per: "Foluke Laosebikan, K.C."

Per: "Melissa Nicolls"

Per: "Len Daniels"

Corrigendum dated July 11, 2025