

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

**AND**

**IN THE MATTER OF AN APPEAL  
REGARDING SURINDER RANDHAWA  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Appeal Panel**

Bill Hendsbee, QC – Chair and Bencher  
Ryan Anderson, QC – Bencher  
Kene Ilochonwu – Bencher  
Cal Johnson, QC – Bencher  
Barbara McKinley – Lay Bencher  
Bud Melnyk, QC – Bencher  
Salimah Walji-Shivji – Bencher

**Appearances**

Shane Sackman – Counsel for the Law Society of Alberta (LSA)  
Dennis McDermott, QC – Counsel for Surinder Randhawa

**Hearing Date**

May 4, 2022

**Hearing Location**

Virtual Hearing

**APPEAL PANEL DECISION**

**Overview**

1. Surinder Randhawa has operated as a sole practitioner in Calgary since he was admitted as a member of the LSA in 1989.
2. On April 30, 2014, a Hearing Committee (Committee) convened a hearing into the conduct of Mr. Randhawa, based on five citations:
  - 1) It is alleged that you assisted one or more clients in an improper purpose, and that such conduct is conduct deserving of sanction.
  - 2) It is alleged that you failed to properly supervise your support staff, and that such conduct is conduct deserving of sanction.

- 3) It is alleged that you failed to serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
  - 4) It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
  - 5) It is alleged that you failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
3. Following nine days of hearing between April 30, 2014 and September 29, 2014, the LSA and Mr. Randhawa presented the Committee with an Agreed Statement of Facts and Admission of Guilt (Agreed Statement) on citations 2, 3 and 4. No evidence was called respecting citations 1 and 5, and these were dismissed by the Committee. The Committee found that Mr. Randhawa was guilty of citations 2, 3 and 4 and imposed a sanction of a reprimand, a 14-month suspension, and costs in the amount of \$79,928.09. Costs were to be paid within one year of reinstatement to practice. The Committee's full decision and its reasons are detailed in its October 20, 2014 Hearing Report: *Law Society of Alberta v. Randhawa*, 2014 ABLs 42.
  4. Pursuant to section 75 of the *Legal Profession Act*, Mr. Randhawa appealed the Committee's decision on costs on January 13, 2015.
  5. Mr. Randhawa based his appeal on the following grounds:
    - 1) That he cannot afford to pay the costs award imposed by the Committee as he is impecunious; and
    - 2) That he was treated unfairly within the LSA process or by the manner in which the LSA pursued its case against him.
  6. On May 4, 2022, an Appeal Panel of Benchers (Appeal Panel) conducted a hearing of the appeal by Mr. Randhawa of the Committee's decision.
  7. After reviewing the Hearing Report and the hearing record, and considering the representations of the LSA and Mr. Randhawa, for the reasons set out below, the Appeal Panel dismisses the appeal of Mr. Randhawa.
  8. In addition, the Appeal Panel orders costs of the appeal to be paid by Mr. Randhawa, as outlined in paragraph 41 herein.

### **Preliminary Matters**

9. There were no objections to the constitution of the Appeal Panel or its jurisdiction, and a private hearing was not requested, so a public hearing of Mr. Randhawa's appeal proceeded via video conference.

## Background

10. Upon accepting the Agreed Statement from Mr. Randhawa in relation to the three citations referenced above, the Committee addressed the issue of costs. Notwithstanding the submissions of Mr. Randhawa that costs ought to be reduced on the basis that the LSA had called no evidence on two of the citations, the Committee ordered that the full amount outlined in the LSA's Estimated Statement of Costs was payable within one year of Mr. Randhawa's reinstatement to practice.
11. To date, the entire costs amount remains unpaid.

## Submissions and Analysis

### *Standard of Review*

12. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada set the standard of review for an appeal from an administrative body to an external body, the Courts. Shortly thereafter, the Alberta Court of Appeal interpreted *Vavilov* in the context of an appeal within the same administrative body in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98.
13. The LSA submits that the *Yee* case reflects the appropriate standard of review in this matter, citing the following guideline outlined at paragraph 35 of the decision:

When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review: *Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation*, 2010 NSCA 38 at para. 23, 290 NSR (2d) 361. The following guidelines may be helpful:

- (a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
- (b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
- (c) with respect to decisions on questions of law by the discipline tribunal arising from the profession's home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine the issue, to

promote uniformity in interpretation, and to ensure that proper professional standards are maintained;

- (d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well-positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: *Newton* at para. 79. It obviously should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;
- (e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession;
- (f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

14. The LSA further submits that the Committee's determination on costs was a discretionary decision that should be accorded deference on appeal, suggesting that the Appeal Panel should consider reasons "which could be offered to support a decision," as outlined in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraphs 12 and 16:

[12] [...] "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Emphasis original to 2011 SCC 62]

[...]

[16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and

permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

15. Mr. Randhawa takes issue with the applicability of *Yee* to this appeal, pointing out that Justice Slatter's comments were made in obiter and are merely "guidelines" which "may be helpful." He submits that these guidelines are not appropriate given that the Committee was dealing with a joint submission presented before the hearing had run its full course.
16. Mr. Randhawa also submits that there was, in fact, no determination of costs made by the Committee nor was it a discretionary decision. Rather, he submits, the Committee merely "rubber stamped" the Estimated Statement of Costs prepared by the LSA.
17. Notwithstanding the submissions of Mr. Randhawa, the Appeal Panel finds that the standard of review set out in *Yee* applies to this appeal.
18. In addition, the Appeal Panel adopts the reasoning outlined in *Moll v. College of Alberta Psychologists*, 2011 ABCA 110. At paragraph 33, Chief Justice Fraser provided guidance on the sufficiency of reasons given by a hearing committee, summarized as follows:
  - (a) The three purposes that reasons serve are to tell the parties why a decision was made, to provide public accountability for that decision and to permit effective appellate review;
  - (b) Reasons are not to be read in a vacuum but rather in context; and
  - (c) That context necessarily includes the totality of the evidence led during the proceedings, the issues raised and the arguments advanced in counsels' submissions.

### ***Impecuniosity***

19. Mr. Randhawa's first ground of appeal is based on his alleged impecuniosity. He submits that the primary reason for his impecuniosity is due to the consequences of the 14-month suspension imposed by the Committee, which stretched to 47 months before he was reinstated on July 17, 2018. He further submits that, as a result, he lost clientele and it has been an arduous process to build up his practice again.
20. Mr. Randhawa also references the unfortunate and sudden death of his son shortly after his reinstatement as a source of grief and depression that has negatively impacted his financial circumstances.
21. The LSA submits that Mr. Randhawa's delay in returning to practice was due to his own actions. Although Mr. Randhawa was eligible for reinstatement on November 29, 2015, he did not approach the LSA to discuss reinstatement until September 2016. At that time, he was advised that the outstanding costs from two disciplinary matters, including

the subject matter of this appeal, along with custodianship fees, needed to be paid prior to reinstatement, as is the case with all suspended members. Notwithstanding that the LSA proposed various repayment options, Mr. Randhawa did not agree to a repayment plan until July 2018, at which point he was promptly reinstated.

22. The LSA takes the position that the imposition of a suspension cannot justify varying a costs award merely because it may have an adverse impact on the finances of the suspended member and that, in fact, it is the ordinary consequence of a suspension to result in financial hardship to the suspended member.
23. The LSA further submits that Mr. Randhawa's current financial circumstances should not be considered as a basis to vary a past costs award.
24. In *Law Society of Alberta v. Torske*, 2016 ABLS 27, the hearing committee, discussing this issue at length, stated the following at paragraph 60:

That said, we do not think that his current impecuniosity is a reason to alter the default rule on costs. We do think that it is a reason to change our original Order, which was to make payment of actual costs a condition precedent to reinstatement, and to order instead that the costs assessed be paid after reinstatement, within two years from the time that he is actually permitted to practice again as an active member of the Law Society of Alberta.

25. The Appeal Panel notes that Mr. Randhawa has provided no evidence of his financial circumstances despite having three separate opportunities to do so: first, before the Committee; second, before a panel of Benchers in 2020 while seeking a waiver of costs for preparing an appeal record; and, finally, before the Appeal Panel. In all three instances, Mr. Randhawa provided only bare assertions of his impecuniosity.
26. In addition, the Appeal Panel notes that the Committee's decision was that costs were to be paid within one year of reinstatement to practice. Mr. Randhawa has made no offer to enter into a payment plan for the costs despite being reinstated to practice since July 2018, and has paid the LSA nothing toward the costs to date.
27. Based on Mr. Randhawa's failure to provide evidence of his impecuniosity along with the application of the principles outlined in *Torske*, the Appeal Panel dismisses this ground of appeal.

### ***Fairness***

28. The Committee heard detailed submissions on costs from both parties, ruling as follows at paragraph 12(ii):

The Member is ordered to pay all costs which may be more than noted in the Estimated Statement of Costs being Exhibit 115 in these proceedings. It is further ordered that the Member shall pay the costs in their entirety within one year of reinstatement to practice.

29. Mr. Randhawa was served with a signed copy of the Statement of Costs on December 30, 2014. Of note, the total had not changed from the Estimated Statement entered as an exhibit at the hearing. Upon being served with the signed Statement of Costs, Mr. Randhawa was advised that he had 15 days pursuant to Rule 99(6) of the Rules of the LSA (Rules) to apply to have the Statement of Costs reviewed.

30. Rule 99(6) states as follows:

If a question arises as to the accuracy of a signed statement of costs, the Hearing Committee shall, on application made within 15 days after the date on which the statement was sent to the member or the member's counsel, review the statement and, on completing the review, may amend or replace the statement and, if necessary, amend or replace the order for costs to reflect the change in the statement.

31. Notwithstanding that he was aware of Rule 99(6) and had been advised that he had the right to "tax" the Statement of Costs, Mr. Randhawa instead chose to appeal the costs award, filing his appeal on January 13, 2015. By not pursuing the option provided by Rule 99(6), he effectively elected to forego his opportunity to have the Committee review the signed Statement of Costs.

32. As was outlined in *Torske*, there is a presumption that the costs of a hearing are borne by the member against whom an adverse finding is made. The hearing committee in *Torske* stated as follows at paragraph 44:

We were provided with one decision of a Hearing Committee of the Law Society of Alberta that expressly cited that case in support, *LSA v. Hoffinger*, [2008] L.S.D.D. No. 169, in which the Hearing Committee said the following at paragraph 83:

[15] In the normal course, a Lawyer found guilty of conduct deserving of sanction after a contested hearing ought to pay the actual costs of the hearing. *Cartledge v. Alberta Veterinary Medical Association*, [1999] A.J. No. 458 (C.A.) supports the proposition that hearing expenses incurred in the exercise of a statutory duty by the LSA are appropriately charged to the Lawyer whose conduct is under scrutiny, rather than expecting all of the Members of the LSA to absorb the costs in the long run. The Hearing Committee was of the view that while the facts raised in argument may be relevant to a determination of the appropriate sanction, they were not sufficient to justify departure from the usual rule concerning payment of costs.

33. The LSA submits that the onus is on Mr. Randhawa to establish why there ought to be a departure from this established principle. The Appeal Panel agrees with the LSA's position. It notes that Mr. Randhawa does not dispute that costs are payable. Rather, he takes issue with the amount owing and an alleged lack of transparency in how those costs were presented to him.
34. Mr. Randhawa's submissions reference some of his personal reasons for choosing to enter into a joint submission with the LSA. With respect, the Appeal Panel is of the view that his reasons for doing so are not relevant to its decision. Instead, the Appeal Panel's role is to determine the overall reasonableness of the costs award made by the Committee.
35. The LSA and Mr. Randhawa agree that this was a complex matter. During the course of the nine hearing days that took place before the joint submission was entered, more than a dozen witnesses were called, 116 exhibits were tendered, significant records were reviewed, substantial investigation fees were incurred, translators were utilized and a handwriting expert was required given allegations of forgery.
36. In particular, Mr. Randhawa disputes having to pay the full costs associated with a handwriting expert retained by the LSA in relation to citation 1, which was not one of the citations included in the Agreed Statement.
37. The LSA submits that these expenses were warranted because the evidence of the handwriting expert, which was led during the contested portion of the hearing, formed the basis for Mr. Randhawa's interim suspension and ultimately resulted in the joint submission.
38. In *Al-Ghamdi v. College of Physicians and Surgeons of Alberta*, 2020 ABCA 71, the Alberta Court of Appeal considered the factors to be taken into account in determining costs to be assessed against a professional, stating as follows at paragraph 48:

A professional charged with misconduct is entitled to make full answer and defence. That principle, however, does not insulate the professional from a costs award if the defence is conducted in a way that is insensitive to the expenses generated. A costs award requires consideration of many factors, including the outcome of the hearing, the reasons the complaint arose in the first place, and the financial burden on both the College and the professional. The way that the defence was conducted is also relevant: *K.C. v College of Physical Therapists of Alberta*, 1999 ABCA 253 at para. 94, 72 Alta LR (3d) 77, 244 AR 28. The costs award here is substantial, but on this record it is not unreasonable. No reviewable error has been shown.



39. The Committee did not provide written reasons in relation to costs. However, Mr. Randhawa was able to make thorough submissions on costs before the Committee, including his argument that costs ought to be reduced given that no evidence was proffered by the LSA on citations 1 and 5. That argument was not accepted by the Committee.
40. The Appeal Panel has had the opportunity to review the entire hearing record. This was a complex matter that was vigorously defended by Mr. Randhawa right up to the point at which the joint submission was made. Having regard to the totality of the evidence, which must be assessed contextually, the Appeal Panel is of the view that the Committee's costs award was reasonable under the circumstances. Therefore, Mr. Randhawa's appeal on this ground is dismissed.

### **Decision**

41. The Appeal Panel dismisses Mr. Randhawa's appeal and the decision of the Committee on costs is hereby confirmed. The full amount of \$79,928.09 is payable on or before January 17, 2023.

### **Concluding Matters**

42. Given that Mr. Randhawa's appeal was dismissed, the LSA is entitled to its costs in this appeal, payable within three months of this written decision. The LSA is to prepare a Statement of Costs and provide it to the Chair for review and approval within one week of this written decision. The parties may make brief written submissions regarding costs within one month of this written decision.
43. The record and other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Randhawa will be redacted and further redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated June 28, 2022.

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Bill Hendsbee, QC – Chair

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Ryan Anderson, QC

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Kene Ilochonwu, QC

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Cal Johnson, QC

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Barbara McKinley

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Bud Melnyk, QC

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Salimah Walji-Shivji, QC