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

AND

IN THE MATTER OF AN APPEAL
REGARDING SHAWN BEAVER
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Appeal to the Benchers Panel

Bud Melnyk, KC – Chair and Bencher
Ryan Anderson, KC – Bencher
Kene Ilochonwu, KC – Bencher
Stacy Petriuk, KC – Bencher
Ron Sorokin – Bencher
Margaret Unsworth, KC – Bencher
Louise Wasylenko – Lay Bencher

Appearances

Shane Sackman – Counsel for the Law Society of Alberta (LSA)
Simon Renouf, KC – Counsel for Shawn Beaver

Hearing Date

October 25, 2022

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

OVERVIEW

1. Shawn Beaver was disbarred on March 9, 2017.

2. A Hearing Committee (Hearing Committee) issued a Hearing Committee Report (Merits Decision) on February 8, 2017. Following eight days of testimony the Hearing Committee found Mr. Beaver guilty of 7 of the 12 citations, being numbers 1 to 5, 7 and 8 (Citations). These Citations will be particularized later in this decision when considering the appeal arguments.

3. A sanction hearing was held on February 15, 2017 and a Hearing Committee Report: Sanction (Sanction Decision) was issued March 9, 2017 whereby Mr. Beaver was disbarred and ordered to pay costs of $120,000.

4. Pursuant to section 75 of the *Legal Profession Act*, RSA 2000, c. L-8 (*Act*) Mr. Beaver has appealed the Hearing Committee's findings of guilt, the disbarment sanction and the costs award. Mr. Beaver's appeal was heard by the Appeal Panel of seven Benchers (Panel) on October 25, 2022.

5. For the reasons set out below, the Panel dismisses the appeal, confirms the Hearing Committee's findings of guilt, the determination on sanction and the award of costs.

PRELIMINARY MATTERS

6. There were no objections to the constitution of the Panel or its jurisdiction. A private hearing was not requested. The public hearing on Mr. Beaver's appeal proceeded.

7. Pursuant to section 75 of the *Act*, Mr. Beaver appealed the findings of guilt, sanction and costs by the Hearing Committee. This is an appeal as of right under section 75 of the *Act*. It is not an appeal to the court. It is an internal appeal to a Panel of Benchers of the LSA. Pursuant to section 76(1), the Panel held a hearing to consider both the Merits Decision and Sanction Decision. The Panel may affirm or quash the findings of guilt, the disbarment sanction or the award of costs.

8. The following Exhibits were entered by consent:

Exhibit 1 – Service of the Hearing Committee Report on Shawn Beaver.
Exhibit 2 – Service of the Hearing Committee Report: Sanction on Shawn Beaver.
Exhibit 3 – Notice of Appeal.
Exhibit 4 – Service of Hearing Record on Shawn Beaver.
Exhibit 5 – Letter of Appointment of the Panel.
Exhibit 6 – Notices to Attend.
Exhibit 7 – Service of the Notice to Attend on Shawn Beaver.
Exhibit 8 – Letter of Exercise of Discretion.

BACKGROUND

9. Mr. Beaver was admitted to the LSA on June 30, 1994 and practiced primarily in the area of criminal law, but also in the areas of civil litigation and aboriginal law. Mr. Beaver graduated first in his class from the University of Alberta law school in 1993. During Mr. Beaver's 20-plus years of practice he had no prior record of misconduct, and he appears to have provided a high level of service to his clients.

10. During the time period when the Citations arose between January 1, 2014 and May 25, 2015 Mr. Beaver had been medically diagnosed with depression and alcoholism. This

time-period was very stressful for Mr. Beaver due to a spate of personal, medical and financial difficulties. This included downturns in the financial success of his practice, a marital breakup and the passing of his mother.

STANDARD OF REVIEW: MERITS DECISION[1]

11. This is an internal appeal. On March 6, 2020, the Alberta Court of Appeal decided *Yee* v. *Chartered Professional Accountants of Alberta*.[2] We find that the standard of review to an appeal panel of the LSA is one of "reasonableness" as set out in *Yee* at paragraph 35*:*

> 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;

[1] The standard of review on sanction will be addressed under Standard of Review: Sanction.
[2] *Yee v. CPAA*, 2020 ABCA 98.

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.

12. In applying the reasonableness standard, the Panel takes note of the comments by the Alberta Court of Appeal in *Moffat v Edmonton (City) Police Service*[3] where the Court, quoting from *Canada (Minister of Citizenship and Immigration) v. Vavilov*[4], states:

> [71] Reasonableness review is concerned with "justification, intelligibility and transparency" in the decision-making process (para 100). Written reasons, where provided, are the "primary mechanism by which administrative decision makers show that their decisions are reasonable" (para 81). A reasonable decision is one based on a "rational chain of analysis" (paras 85, 103), it being necessary to "trace the decision maker's reasoning without encountering any fatal flaws in it overarching logic" such that one can be "satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived' [citations omitted]" (para 102).

GROUNDS OF APPEAL

13. In respect of the finding of guilt, Mr. Beaver generally argues that the findings of fact throughout the Merits Decision are unreasonable, not supported by the evidence and that the Hearing Committee misapprehended the evidence. More particularly, the following is a summary of Mr. Beaver's grounds of appeal:

a) The Hearing Committee made unreasonable findings and misapprehended the evidence and facts in respect of Citations 1 to 4. These factual errors resulted in Mr. Beaver's conduct appearing worse than it was, which then impacted sanction.

b) The Hearing Committee breached the Rule in *Browne v. Dunn* in respect of certain findings by the Hearing Committee regarding the financial statements of Mr. Beaver.

c) A finding of misappropriation under Citation 5 (misappropriation of the house sale proceeds) is at odds with the evidence given that the Hearing Committee found that Citation 6 (breach of accounting rules) was not established.

[3] *Moffat v. Edmonton (City) Police Service*, 2021 ABCA 183.
[4] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

d) Citation 8 (failing to act with integrity on the sale of a house) was based upon unreasonable and erroneous findings of fact which are not supported on the evidence.

14. On the issue of sanction Mr. Beaver argues as follows:

a) That the disbarment was excessive and unreasonable in all of the circumstances, and the Sanction Decision is affected by numerous misunderstandings of the evidence and erroneous findings of fact.

b) That the Hearing Committee improperly rejected the medical evidence of Mr. Beaver and in particular the Hearing Committee erred in minimizing the medical diagnoses of depression and alcoholism by referring to these as being nothing more than the "ordinary stressors that are expected for practitioners in the demographic of Mr. Beaver."

c) That the costs award was excessive and based on a misunderstanding of the facts.

ANALYSIS: CITATIONS 1, 2, 3 AND 4 (Misappropriation Trust Funds)

15. Citations 1 to 4 (CO20151306) were as follows:

1. *It is alleged that you misappropriated or wrongfully converted money entrusted to you and that such conduct is deserving of sanction.*
2. *It is alleged that you breached the accounting rules of the Law Society of Alberta and that such conduct is deserving of sanction.*
3. *It is alleged that you failed to be candid with the Law Society of Alberta and that such conduct is deserving of sanction.*
4. *It is alleged that you failed to meet financial obligations in relation to your practice and that such conduct is deserving of sanction.*

16. Citations 1 to 4 dealt with circumstances where Mr. Beaver was misappropriating client trust funds in order to finance his personal spending habits and the financial obligations of his practice. Mr. Beaver was found guilty of misappropriating trust funds (Citation 1), breach of accounting rules (Citation 2), failure to be candid with the LSA (Citation 3) and failing to meet financial obligations of practice (Citation 4).

Appellant's Arguments

17. Mr. Beaver argues that the Hearing Committee findings of fact in respect of Citations 1 to 4 were unreasonable and not supported by the evidence. In this regard, Mr. Beaver raises issues regarding the facts and conclusions reached by the Hearing Committee in paragraphs 21, 23, 24, 31, 32 and 33 of the Merits Decision.

18. Paragraph 21 of the Merits Decision states:

> The accounting records of the firm show expenses for some luxury goods being passed through to the firm by way of firm credit cards (for example, trips, airfare, jewelry, personal furniture and other personal expenses). This may not be unusual or improper as long as it was properly accounted for, and credited appropriately to firm expense and personal draws. Most importantly, there must be actual profit from the firm to pay for such expenses, which there was not.

19. Mr. Beaver objects to the suggestion that he was not otherwise paying off his credit card on a monthly basis, or that he was not properly accounting for any personal expenses. With respect, a clear reading of paragraph 21 makes no such suggestion or implication. The Hearing Committee simply stated that using a firm credit card for personal items is "not unusual or improper as long as it was properly accounted for, and credited appropriately to firm expense and personal draws." Paragraph 21 does not imply or infer that Mr. Beaver was not otherwise properly accounting for personal expenditures on the firm credit card.

20. Mr. Beaver further argues that the reference in paragraph 21 to "no profit" in the firm is contrary to the financial evidence before the Hearing Committee. In particular, he argues that this contradicts the findings at paragraph 16 of the Merits Decision, the relevant portion which states:

> … The practice, according to Mr. Beaver and substantiated by accounting records, was financially and professionally successful. …

21. This Panel finds no merit to this argument. In the first instance, paragraph 16 merely recites the position of Mr. Beaver. The Hearing Committee did not expressly accept the veracity of the accounting records. Furthermore, paragraphs 16 and 21 must be read in the context of paragraph 23 (which is cited below) of the Merits Decision where the Hearing Committee found that the financial statements did not fully disclose a number of "considerable financing obligations which were not on the balance sheets…" The Hearing Committee did not expressly say that there was no "profit" based on the financial records; the Hearing Committee, looking at all of the evidence, was of the opinion that Mr. Beaver's practice was subject to other financial obligations.

22. Paragraph 23 of the Merits Decision states:

> The financial statements were built on the information that Mr. Beaver had provided to his accountants. In actual fact, the practice was subject to considerable financing obligations which were not on the balance sheets but which were confirmed in evidence at the hearing:

a. Mr. Beaver had borrowed, for the purposes of setting up his practice, approximately $250,000.00 from his father (R.B.) and used client funds to pay this loan, leading to some of the citations issued against Mr. Beaver.

b. Mr. Beaver had obtained control of the trust funds of a client (D.I.) outside of the trust accounts of the firm and had applied those funds to the payment of his father's loan and to the financing of the firm.

c. In addition to the firm line of credit, BLA[5] credit card balance was always at the maximum of the allowed credit limit, usually around $50,000.00, and subject of course to the highest interest rate.

d. Mr. Beaver failed to pay one of his associates, L.R., a sum of approximately $50,000.00, representing his share of a contingency fee.

23. Mr. Beaver raises issues with the specific evidence that the accountant had for the firm for determining profit/loss. Mr. Beaver in his appeal submissions, goes through each of the four items not referenced on the balance sheet and he offers the following arguments:

a) The amount borrowed from Mr. Beaver's father was $210,000 (not $250,000) and this amount was on the firm books. The firm was making monthly payments reflected in the firm records. Firm profits were paid to Mr. Beaver, and he then paid his father.

b) Mr. Beaver agrees that he was holding trust funds for D.I., but he disagrees that he withheld this information from the accountant since trust funds would not normally show on a profit/loss statement.

c) Firm credit card balances and payments on the credit card would show on financial statements and be included under "bank indebtedness."

d) It is admitted that at the date the custodian shut down the firm (May 26, 2015) monies were owed to an associate, L.R., who was paid a percentage of fees collected. Mr. Beaver's evidence was that there was $160,000 to $200,000 in uncollected fees as of May 26, 2015, which the custodian took no steps to collect.

24. Looking at these paragraphs from a holistic perspective we see nothing that would substantiate a basis supporting a finding that the Hearing Committee made any unreasonable findings of fact or that they misapprehended the evidence. In particular:

a) There was sufficient evidence before the Hearing Committee to conclude that Mr. Beaver was using client trust funds to repay the loan to his father. Trust funds

[5] BLA is the firm name acronym.

went into the firm account and then were paid to Mr. Beaver. These trust funds were indirectly, and arguably directly, being used to pay the parental loan.

b) With respect to the trust funds of D.I., the Hearing Committee did not say that this information was "withheld" from the accountant, but rather the Hearing Committee simply stated that Mr. Beaver's practice had other financial obligations not otherwise reflected in the financial statements.

c) The Hearing Committee pointed out that the firm credit card was always at a maximum and thus paying high interest. Credit card balances and payments would show on financial statements, but that does not diminish that interest payments would be at a high rate of interest.

25. The suggestion by Mr. Beaver in his appeal that doubt was being cast upon the genuineness of his dealings with the accountant is simply not supported by a reading of the Merits Decision. There was no finding by the Hearing Committee that Mr. Beaver withheld information from his accountants. While the financial statements of Mr. Beaver may have showed a financially successful practice, the Hearing Committee considered that the reality of Mr. Beaver's personal debt situation was such that his "lifestyle spending" was outpacing his professional income. This was supported in part by the evidence that the pooled trust account was approximately $70,000 in arrears in June 2014.

26. What the Hearing Committee found was that the personal lifestyle of Mr. Beaver, coupled with the personal debts and other firm debts not otherwise shown on financial statements, placed Mr. Beaver in financial peril. These findings by the Hearing Committee were central to its findings as to why Mr. Beaver was improperly misappropriating trust funds. The Panel does not concur with the argument by Mr. Beaver that the Hearing Committee improperly concluded that the law firm was not profitable. What they reasonably concluded was that Mr. Beaver was not personally profitable.

27. Mr. Beaver further takes exception to paragraph 24 of the Merits Decision:

> BLA was a solid criminal practice, but its income could not keep up with Mr. Beaver's spending. This happens from time to time but the LSA's regulatory interests became engaged when Mr. Beaver's clients trust funds and associates' salaries were used to sustain Mr. Beaver's lifestyle spending when bank financing ran out.

28. Mr. Beaver does not agree with the reference to associates' salaries being used to sustain Mr. Beaver's lifestyle spending. Associates received their pay (except for L.R.) for every month and year prior to May 2015. Some were not paid at the end of 2015, but Mr. Beaver was no longer in control of the firm General Account at that time.

29. This paragraph 24 must also be read in conjunction with paragraphs 25, 23(d) and 21. We would agree that the only evidence of employees not being paid was the $50,000 owed to L.R., but it was clear that as of June 2014 the pooled trust account was $70,000 in a deficit position. It is also clear that Mr. Beaver was living a lifestyle that exceeded his income. While a reference by the Hearing Committee to multiple associates was inaccurate, such statement taken in the context of the entire Merits Decision cannot be fatal.

30. Paragraph 31 of the Merits Decision states:

> Money from the pooled trust accounts was taken by Mr. Beaver by various means. For example, advance billings were allegedly issued for work that was not done, and trust funds were paid out to cover personal and firm debts. When Mr. Beaver finally self-reported on May 24, 2015, and the firm broke up, many of the firm's clients who had deposited amounts in trust to cover their upcoming hearings were left without the funds to continue their retainers.

31. Mr. Beaver argues that the Hearing Committee's "suggestion that he was writing cheques from trust to cover personal expense is incorrect." Mr. Beaver asserts that there was no evidence of payments out of trust for firm or personal debts and that each withdrawal had a corresponding account issued.

32. The fact that a proper accounting paper trail exists for each trust withdrawal does not mean that the monies so removed were not ultimately being personally used by Mr. Beaver. There was a reasonable chain of evidentiary transactions whereby trust monies went into the firm general account and that Mr. Beaver would then take a personal draw. The Hearing Committee was at liberty to draw an inference from the evidence that Mr. Beaver's misappropriation of trust funds was being used to cover personal expenses. The Panel finds that the Hearing Committee's conclusion in this regard should be respected and that there is no articulable reason for disagreeing with their conclusion.

33. Paragraph 32 of the Merits Decision states:

> Mr. Beaver's lifestyle spending throughout 2014 exhausted the credit available to the firm. The line of credit was used up, the credit card balance was at its maximum limit, pooled trust accounts had been drained through various means, and trust monies held by Mr. Beaver as Power of Attorney for D.I. had been taken.

34. Mr. Beaver takes the position that, other than the use of the firm credit card, his personal expenses were paid from his personal money, which was firm generated revenue.

35. The evidence before the Hearing Committee was that Mr. Beaver had engaged in a number of improper accounting "tricks" where trust monies would be paid into the firm

general account, which of course resulted in a trust shortfall. Those general account funds were personally drawn by Mr. Beaver. As stated above, the Hearing Committee was at liberty to draw an inference from the facts that Mr. Beaver's misappropriation of trust funds was being used to cover personal expenses. There is no coherent reason for disagreeing with the Hearing Committee on this point.

36. Paragraph 33 of the Merits Decision states:

> Mr. Beaver and J.B.[6], through their monthly trust reconciliations, were aware of this throughout 2014 and matters came to a head in May of 2015:
>
> a. There were insufficient funds coming in to support the payroll payable at the end of May 2015.
> b. There were no further trust accounts available to finance the payroll.
> c. Pursuant to LSA rules, BLA had "uploaded" its 2014 trust account data to the LSA at the end of January 2015 and immediately thereafter the LSA had begun corresponding with Mr. Beaver, requesting clarification for the various adjustments in his trust accounting which had been used to justify the taking of trust funds.
>
> J.B. knew that it was the "end of the road" when they could not meet that month's payroll. In addition, the LSA would soon become aware of the trust fund deficiency.

37. In respect of paragraph 33, Mr. Beaver takes exception to the Hearing Committee's suggestion that the trust account was completely drained. Mr. Beaver says this was not true and that the trust account had tens of thousands of dollars. Mr. Beaver also objects to the allegation that the LSA (through Trust Safety) had been inquiring about what the Hearing Committee termed "falsified entries."

38. The trust account may have had further monies, but the misstatement by the Hearing Committee that the "trust account was completely drained" is not central to the findings of misappropriation. A minor misstatement cannot by itself be sufficient to find the Merits Decision unreasonable.

Appeal Panel Decision

39. The Panel finds no merit to the arguments put forth by Mr. Beaver regarding paragraphs 21, 23, 24, 31, 32 and 33 of the Merits Decision. The Hearing Committee's findings of fact were amply supported by the evidence and considered overall the Merits Decision is reasonable. The Panel is satisfied that there is no articulable reason for disagreeing with inferences, if any, that may have been drawn by the Hearing Committee.

ANALYSIS: RULE IN BROWNE V. DUNN

[6] J.B. was Mr. Beaver's assistant and firm bookkeeper.

40. Mr. Beaver argues that the question of the deficiency of the financial records as reflected in paragraph 23 was not put before Mr. Beaver in cross-examination. This failure, according to Mr. Beaver, amounted to breach of the rule in *Browne v. Dunn* (1893) 6 R. 67 (H.L.). That rule states (at paragraphs 70 – 71):

> Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that his is a witness unworthy of credit.

41. In support of the rule breach, Mr. Beaver puts forth the case of *Walton v. Alberta (Securities Commission)*[7]. In that case the Securities Commission rejected the evidence of Gayle Walton, a professional accountant. The Securities Commission stated: "It defies belief that Gayle Walton, an accounting professional with knowledge or easy access to guidance about tax rules (and, in particular, access to plainly-worded guidance about the stop-loss rules), would have been so mistaken on both issues." The Court of Appeal found that this violated the rule in *Browne v. Dunn* where the Court states at paragraph 143:

> The biggest problem with this analysis is that it was never put to Gayle Walton in cross-examination that she was being dishonest in her evidence, and that her professional ignorance was unreasonable. The Commission not only found that she was lying under oath, but that it was "beyond belief" that an accounting professional could operate under this sort of misapprehension about the tax rules. Yet Gayle Walton was never asked anything about the nature of her practice, whether she had extensive experience with stock options, or whether she had ever had to apply the superficial loss rule before.

42. The Panel finds that the rule in *Browne v. Dunn* is not applicable. The Hearing Committee made no finding that Mr. Beaver failed to give certain financial information to the accountants or that the financial statements were deficient. The Merits Decision at paragraph 23 simply found that the law practice of Mr. Beaver had other financial obligations; the Hearing Committee did not find that Mr. Beaver failed to advise his accountants of these other financial obligations. There was no contradictory evidence or any attempt to impeach Mr. Beaver's credibility. The Hearing Committee was simply providing a general summary of the state of the law firm's accounts, and this does not in any way impeach Mr. Beaver's credibility.

[7] *Walton v. Alberta (Securities Commission), 2014 ABCA 273.*

43. The *Walton* case is distinguishable on its facts. In Mr. Beaver's case, the Hearing Committee was not contradicting the validity or truthfulness of the financial statements or that Mr. Beaver failed to provide certain information to the accountants. The Hearing Committee was not impeaching the credibility of Mr. Beaver regarding the financial statements. The Hearing Committee made no findings that the financial statements were inaccurate or that Mr. Beaver failed to properly advise the accountant. A specific question about why Mr. Beaver failed to give certain information to the accountant would not have been relevant or necessary. There was ample discussion around the lifestyle of Mr. Beaver and all of the other debt obligations of Mr. Beaver. As such Mr. Beaver had ample opportunity to address these matters during the hearing. The credibility of Mr. Beaver was not in issue nor was there any suggestion that Mr. Beaver was being dishonest in his communications with his accountant.

ANALYSIS: CITATIONS 5, 7 AND 8 (*Sale of Home)*

44. Citations 5 to 8 (CO20152043) were as follows:

> *5. It is alleged that you misappropriated or wrongfully converted money from your trust account and that such conduct is deserving of sanction.*
> *6. It is alleged that you breached the accounting rules of the Law Society of Alberta and that such conduct is deserving of sanction.*
> *7. It is alleged that you failed to attend to a sale of real property by yourself in the manner expected of a careful and prudent solicitor and that such conduct is deserving of sanction.*
> *8. It is alleged that, in relation to the sale of real property by yourself, you failed to act with integrity and that such conduct is deserving of sanction.*

Factual Background and Findings of Hearing Committee

45. Citations 5 to 8 dealt with the net sale proceeds of $18,653.16 from the sale of a home owned jointly by Mr. Beaver and his former common law partner, C.F. These sale proceeds were being held in trust and Mr. Beaver paid the remaining sale proceeds to himself. The Hearing Committee found Mr. Beaver guilty of conduct deserving of sanction on Citations 5 (misappropriation of trust funds), 7 (failing to attend to sale in manner expected of a competent lawyer) and 8 (failing to act with integrity), and not guilty on Citation 6. Citation 6 alleged a breach of the accounting rules when Mr. Beaver paid himself the $18,653.16, but the Hearing Committee found that there was no clear accounting rule which prevented the release of these sale proceeds.

46. The facts surrounding these Citations can be summarized as follows:

> 1) Mr. Beaver and his common law partner, C.F., were separating and needed to sell their jointly owned home. The specific agreement between Mr. Beaver and C.F. was never reduced to writing, but it appears that C.F. would live in the

house during the sale process and that Mr. Beaver would pay the mortgage and related repairs, but that he expected to be paid back from the sale proceeds.

2) Mr. Beaver's firm was retained to act as the vendor's solicitor. A senior associate, B.L., was the signatory on the conveyancing documents, but that lawyer was merely notionally handling the sale. In fact, all the actual work for the sale was done by Mr. Beaver's assistant under the direction of Mr. Beaver. B.L. had only a cursory knowledge of real estate conveyancing and he was merely providing his signature.

3) On title to the matrimonial home was a mortgage and a caveat. The home was to be sold with clear title, including discharge of the caveat, but Mr. Beaver and C.F. had insufficient fund to do so. This caveat was filed by the bank to secure all of indebtedness of Mr. Beaver's law firm, which included a line of credit, a credit card and a loan which had previously been taken to pay out a departing partner. The total owing on these loans was $125,000.

4) The cash to close was provided and paid by the purchaser's lawyer to Mr. Beaver's firm on B.L.'s undertaking to discharge the mortgage and caveat. After paying out the mortgage there was $18,653.16 remaining in trust and Mr. Beaver instructed his assistant to pay these funds to him. Mr. Beaver felt he was entitled to the remaining funds on the basis that he had a valid claim to these monies because of the arrangement with C.F., namely that Mr. Beaver would be reimbursed for payment of the mortgage and repair costs.

5) The home was transferred to the buyers with the caveat. The liability insurer for B.L. eventually paid out the $125,000 sum to have the caveat discharged.

47. The Hearing Committee found that the evidence supported a finding of misappropriation. In particular, the Hearing Committee found that at the time of the sale Mr. Beaver "was struggling to keep up with all of the financial requirements of him"[8] and that he had a "growing awareness" of his financial reality. This reality included that Mr. Beaver was in arrears of spousal support under a court order and that he owed CRA the sum of $60,000. In addition, the Hearing Committee found that there were competing claims to the sale proceeds, including C.F., the bank and the purchasers.

48. The Hearing Committee went on to conclude that the $18,653.16 paid to Mr. Beaver was not a result of an innocent or negligent mistake, but rather that Mr. Beaver "preferred his own interest in getting access to the $18,000 at a time of financial instability and preferred his own interests over the interests of other legitimate and superior claimants."[9]

Appellant Arguments

[8] Paragraph 72 of the Merits Decision.
[9] Paragraph 80 of the Merits Decision.

49. The Hearing Committee found that there was no clear LSA Rule which prevented the release of the sale proceeds being held in trust to Mr. Beaver. Mr. Beaver firstly argues that a finding of guilt on Citation 5 (misappropriating the sale proceeds) is inconsistent with a not guilty finding on Citation 6 (breach of accounting rules). In other words, there can be no misappropriation of funds without an express breach of the accounting rules.

50. Mr. Beaver also argues that the facts do not support a finding of misappropriation and he notes the following facts:

    a) Mr. Beaver and C.F. had agreed that Mr. Beaver could be reimbursed from the sale proceeds for the monthly house expenses which Mr. Beaver was paying though C.F. continued to remain in the home. Mr. Beaver states the monthly expenses, in fact, exceeded any amount that C.F. might have received from the house sale proceeds.

    b) Mr. Beaver also asserts that he was under no trust obligation to C.F.'s family lawyer since that lawyer had waived any conflict of interest by allowing Mr. Beaver's firm to represent C.F. on the sale. Furthermore, the sale of the house had transpired prior to C.F. retaining the family lawyer.

    c) Mr. Beaver acknowledges that he did owe monthly support to C.F., but that these arrears of support were subsequently overturned by the Court of Appeal in *Frank v. Beaver*, 2016 ABCA 35. The upshot of this case was that C.F. had no priority claim to the support arrears and that that decision applies retroactively.

    d) Mr. Beaver also argues that no other party had a priority claim to the sale proceeds. This included the CRA, the purchaser and the bank. The CRA had no process issued. As regards the purchaser and the bank, the caveated loan was taken out years earlier and had been repaid in full. Mr. Beaver believes he would have been able to have the caveat removed.

51. Mr. Beaver also disagrees with the Hearing Committee's finding that he misled the associate who was notionally handling the sale. Mr. Beaver does agree that he did not advise the associate of the outstanding caveat, but Mr. Beaver states that he did not actively sit with the associate and mislead him about the sale.

52. Mr. Beaver argues that Citation 8, that he failed to act with integrity in relation to the sale, was mere surplusage, unnecessary and not relevant to the matter.

Appeal Panel Decision

53. In response to these arguments, the Panel takes a holistic view of the actions of Mr. Beaver, and we do not perceive that the findings of the Hearing Committee were unreasonable or that there was error either of principle or law. In particular, we note:

a) The Hearing Committee clearly turned its mind to the law relating to "misappropriation" at paragraphs 44 to 47 of the Merits Decision and as such the Hearing Committee reasonably concluded, at paragraph 79 of the Merits Decision, that the taking of the sale proceeds amounted to a "misappropriation" .

b) Not every misappropriation will necessarily have an associated Rule such that the dismissal of Citation 6 is not by itself inconsistent with a finding of guilt on Citation 5.

c) Mr. Beaver did not have the express consent of his former partner, C.F., to receive the balance of the trust sale proceeds. While Mr. Beaver may have had an agreement with his former partner, the Hearing Committee found that it was still incumbent upon Mr. Beaver to obtain C.F.'s express consent. Any agreement was never reduced to writing. There is of course an email from a friend of C.F. where that email states that "yes C.F. agrees you will be reimbursed for expenses for the house …". Mr. Beaver relies upon this email as evidence of the agreement between himself and C.F. The Hearing Committee considered this email and weighed it accordingly and we see no error in their findings.

d) In any real estate matter, it is often an express or an implied term that the vendor will provide a clear title. Mr. Beaver was well aware that the caveat was still on title and that, until he knew with certainty that the caveat was going to be discharged, Mr. Beaver should have taken no steps to pay himself the sale proceeds. By his own admissions Mr. Beaver knew that the caveat would not be discharged by the lender until they were paid.

e) It is disingenuous of Mr. Beaver to say that he did not mislead the associate, B.L., about the caveat. As stated in evidence by Mr. Beaver: "Mr. [B.L.] was completely in the dark." Mr. Beaver may not have expressly misled the associate but misleading someone can be done through silence as much as verbally. When you mislead someone, you are giving them the wrong idea or impression and the associate was certainly under a wrong impression. The associate understood that there was money in trust to cover any encumbrances on title as evidenced by his testimony:

> Q You didn't know the amounts of the encumbrances?
>
> A I didn't know the exact amounts that were owing. That's why I said to [J.B.] we have enough money to cover these? Good. All right.
>
> Q So what was your understanding about discharge of the encumbrances? Who would be responsible for that?

A Well, that we had money in trust and that the money would be paid out. That was my understanding.

Q Who did you think would be dealing with that?

A Well, the only person with signing authority is Shawn Beaver, so the person that would be signing those cheques would be Mr. Beaver.

OTHER CITATIONS

54. Of the other citations the Panel merely notes the following:

a) Citations 9 and 10 dealt with a specific file where it was alleged that Mr. Beaver issued a fee account and paid himself with trust funds received as a retainer, prior to work being done. The Hearing Committee was not satisfied that this citation had been proven and Mr. Beaver was found not guilty in respect of citations 9 and 10.

b) Citations 11 and 12, much like 9 and 10, involved an advance billing, but with a different client. LSA conceded that they were not pursuing these two citations and accordingly, the Hearing Committee found Mr. Beaver not guilty on citations 11 and 12.

STANDARD OF REVIEW: SANCTION

55. The appropriate standard of review on sanction is "reasonableness" which standard was established by the Alberta Court of Appeal in *Zuk v. Alberta Dental Assn. and College*[10] where the Court stated:

> [15] Pre-*Vavilov*, it was clear that deference was owed to professional disciplinary bodies on the fitness of sanctions and the fact findings underpinning them: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para 42 [*Ryan*]; *Groia v. Law Society of Upper Canada,* 2018 SCC 27 at paras 43, 57. As *Vavilov* does not directly address the question of standard of review for sanctions imposed by professional disciplinary bodies, this Court was asked to provide guidance on this point. In our view, the appropriate standard of review remains reasonableness. *Vavilov* provides a "revised framework that will continue to be guided by the principles underlying judicial review… articulated in *Dunsmir v. New Brunswick,* 2008 SCC 9" [*Dunsmuir*]: para 2. The longstanding principles articulated in *Dunsmuir* and *Housen* have not been displaced: *Vavilov* at para 37. As noted in para 13 above, the standards of review on statutory appeals are the same as those applied in other appeals. The focus is on the type of question in dispute. The question of what sanction Dr Zuk should face as a result of his

[10] *Zuk v. Alberta Dental Assn. and College*, 2020 ABCA 162.

> misconduct is a question of mixed fact and law: *Ryan* at para 41. This calls for a deferential standard where the decision results from consideration of the evidence as a whole, but a correctness standard ought to be applied when the error arises from the statement of a legal test, or where there is an extricable question of law: *Housen* at paras 33, 36; *Constable A v Edmonton (Police Service)*, 2017 ABCA at para 41. (our emphasis)

56. On the question of reasonableness in the context of deference, the Panel takes note of the case of *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board*)[11], where the Supreme Court of Canada stated:

> "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.
>
> [….]
>
> Reasons may not include all 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 333 v. Nipawin District Staff Nurses Assn*., [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.

57. The standard of review on matters of sanction is reasonableness and a sanction decision should only be disturbed if it is demonstrably unfit or is based on an error in principle.

ANAYLYSIS: SANCTION

58. On the issue of sanction Mr. Beaver raises the following specific arguments:

a) That the Hearing Committee erred in law by finding that Mr. Beaver's long unblemished career was not a mitigating factor.

[11] *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraphs 12 and 16.

b) That the Hearing Committee's finding that Mr. Beaver intended to continue the firm and replenish the trust deficiency in secret must be overturned as there was never any such suggestion by any of the associate witnesses, and that this finding was an aggravating factor on sanction.

c) That the conclusion by the Hearing Committee that the targets of the misappropriations included clients of Mr. Beaver, his associates, staff, vulnerable people, including disabled people and children is factually incorrect.

d) The conclusion that Mr. Beaver had taken steps to "disguise" or "cover up" is an improper characterization of how the trust deficiency arose and should not have been considered an aggravating factor on sanctioning.

e) The Hearing Committee failed to give Mr. Beaver credit for any of his guilty pleas or admissions.

f) That the Hearing Committee erred in minimizing the medical diagnoses of depression and alcoholism by referring to them as being nothing more than the ordinary stressors that are expected for practitioners in the demographic of Mr. Beaver.

Lengthy Career as Mitigating Factor

59. The first argument by Mr. Beaver is that the Hearing Committee found that "an otherwise unblemished 20 year career" had no mitigating effect, which was an error in law. Mr. Beaver argues that he had a long and unblemished career, a lengthy history of following the Rules and that he had a positive history of contributions to the profession. A discrete period of non-compliance was an exceptional and out of character event for Mr. Beaver.

60. As regards the allegation that the 20 year career had no mitigating effect, it is important to look at the paragraph 17 of the Sanction Decision, which reads:

> The Committee does not accept that misappropriations of this magnitude are mitigated by an otherwise unblemished 20 year career.

61. The Hearing Committee's comment about the mitigating impact of a 20 year career was qualified by the statement that the lengthy unblemished career in and of itself does not mitigate against the significant misappropriations. The Hearing Committee did consider the lengthy career as a mitigating factor; but did not assign it much weight. This was well within the purview of the Hearing Committee and does not amount to an error in law.

Misinterpretation of Meetings

62. The second argument, that Mr. Beaver intended to continue the firm and replenish the trust account in secret, revolves around two meetings between Mr. Beaver and the associates. These meeting had occurred after Mr. Beaver's legal assistant notified the associates of the trust fund shortages. The first meeting was on May 24, 2015 at the firm law offices and a second meeting took place on May 25, 2015 on a walk near the legislature.

63. At paragraph 18 of the Sanction Decision the Hearing Committee wrote:

> Any period of misappropriation ends with being caught, in this case by being forced into self-reporting by his associates. Mr. Beaver's declarations to his paralegal and his associates before his reporting lead to a conclusion that he would have continued the behaviour if he could have found a way to replenish the trust accounts sufficiently to make it another month or months.

64. Mr. Beaver states that this finding at paragraph 18 was in error and likely affected the sanction. In particular, Mr. Beaver argues that the Hearing Committee had a misapprehension of the evidence regarding the two meetings in that the Hearing Committee blended those two meetings. Mr. Beaver says that the finding that he intended to continue the firm and replenish the trust deficiency must be overturned, and that this was an aggravating factor on sanction, requiring the sanction to be revisited.

65. Evidence was given by three associates, B.L., K.S. and M.H., about the two meetings. After giving evidence about the first meeting on May 14, 2015, B.L., the associate who handled the house sale, gave evidence about the second meeting on May 25, 2015, as follows:

> Q Okay. So let's talk about the next day then. What time did you go into the office the next day?
>
> A I was in the office in the morning. It probably would have been right around the time the office opened or shortly thereafter. Marshall and Alex were there. There was some discussion as to whether or not there had been – do we know if there's a report to the Law Society or not.
>
> And we were approached – I don't know if it was me that was approached or if it was [M.H.] or [A.S.]– but Shawn wanted to have this private conversation with us. He wanted to talk to us, and it was clear he hadn't gone to the Law Society yet.
> And so we went for a walk. We left the office.
>
> Q So who went for a walk?
>
> A It was myself, [M.H.], [K.S.], and Shawn Beaver.

And we walked from our office on 103, 104 – whichever it is – towards the Legislature Building. So we walked past the Jasper Building and towards the Ledge south.

And during that conversation, Shawn tried his very best to convince us that we should just bill every penny we possibly could for all of our clients and that he would sign over authority to sign cheques to [M.H.] and I and we would take on responsibility for the firm and he would keep practicing as a lawyer but not as someone running the firm.

There was no talking about going to the Law Society. There was talk about just keep running things; business as usual; don't tell the staff what's going on. Everything's going to be fine. An absolute and total inability to accept responsibility for what he had done. That's the impression I got.

I knew that that afternoon I was going to have to tell the staff that they didn't have jobs anymore. Some of them had worked for the firm for years. I was so angered by what he was suggesting. He essentially wanted us to allow him to continue this – whatever this was – that I walked away because if I didn't walk away, I was going to do something that I was going to regret.
It's that simple.

But the attitude from the night before of tough financial times; yes, I should report myself to the Law Society was not there anymore. We were now in damage control mode; how can we keep this thing going. And I was not willing to be part of that in any way, shape, or form.

And I made it clear to him that I was not going to be part of this; that we were going to Law Society if he wasn't. Full stop; end of story.

Q Okay. So he put forward a plan to just keep going?

A I wouldn't call it a plan. It was to try and get as much money as you can out of trust.

Certainly Ms. [J.B.] left us with the impression that there was a certain amount of money left in the trust account. How much I don't know. What we knew is that there was not anywhere near what should have been there according to what [J.B.] said, but there was still some money there.

And his plan – his exact words were bill everything you possibly can for every single one of your clients. We'll get enough money to pay the staff, and we'll keep the firm going.

That was his plan. Completely unrealistic in my opinion. If you want to call it a plan, sure.

Q Okay. And so what was your response to him?

A Report yourself to the Law Society or I'm going to in a few hours. That was my response.

66. K.S., another associate, also gave evidence about the second meeting on May 25, 2015, as follows:

Q Okay. And then the next day – the 25th – did you see Mr. Beaver that day?

A I did. I was in the office that day. I didn't get into the office immediately. I – I drove downtown that morning, and I spent quite a while sitting in my car in the parkade. I was in tears, and I was trying to pull myself together to go into the office.
I ultimately went into the office. And at that point we had received a few e-mails from Mr. Beaver, and I spent most of the morning in M.H.'s office. And Mr. Beaver contacted us asking who was available to meet him including [J.B.].

And ultimately [B.L.], [M.H.], and I met with Mr. Beaver. We were going to meet in the boardroom, but we decided to take a walk instead.

We walked down 103rd street – we were south of Jasper – and had a very bizarre discussion with Mr. Beaver. And I use the term bizarre because it was very difficult to understand at the time why we were having this conversation.

But Mr. Mr. Beaver basically said to us, you know, yesterday when we talked, we assumed I would be suspended. I've talked to my lawyer, and I understand that may not necessarily be the case.

And the thought running through my mind was how could that possibly not be the case? From everything I've learned about the Law Society, that seemed incompatible to me and incomprehensible.

But then he was proposing how it was his hope that he was going to continue practicing and we would keep practicing with him and he would replenish the trust fund and it would all be okay.

And I remember being quite insulted and angered by this proposal. I felt like the proposal was that we would all just go on as though nothing had happened when our understanding at that point was that he had stolen funds from our clients.

> Mr. Beaver tried to explain to us that, you know, what are you going to do? Just turn off the lights; that sort of thing? And we were stuck standing there saying well, what choice do we have? We can't pay our staff. How do we keep the lights on?
>
> And he then tried to explain to us that we didn't understand how billing cycles worked and how all lawyers would do their accounts at the end of the month and that's where the money would come from to cover all the salaries and the lawyers on commission which just didn't add up if there was $50,000 or less in the trust account and nothing in the general account.
>
> So I again remember being quite angered by that because I felt like he was telling us you just don't understand. And I was standing there thinking well, I understand quite well. Like, I'm not a math person, but to me that math doesn't add up.
>
> So we – all three of us – [M.H.], [B.L], and I – eventually walked away from him. And that was the last discussion I had with Mr. Beaver face-to-face.

67. The third associate, M.H., also gave evidence about the second meeting as follows:

> Q Where did that meeting take place?
>
> A We went for a walk, [A.S.] and [B.L.] and Shawn and myself, we went for a walk down towards the legislature grounds from the office, and while we were walking, we were talking about the situation, and in the course of that meeting, it became clear that Shawn was hoping that we would agree to an arrangement which would allow the firm to continue to operate, an arrangement under which he would not have any signing authority over the trust accounts, but under which we would – the associate lawyers would continue to work and our billings would be able – would be usable to make – to cover the costs of running the firm.
>
> Q What did you think of that proposal?
>
> A I – I didn't – I didn't – I didn't think it was a good idea. I didn't want to engage in that – have that kind of relationship with Shawn at that point.
>
> …
>
> Q Okay. And then what happened?
>
> A I believe we reached an understanding that Shawn had not yet reported himself. It was noon or thereabouts, and so {B.L],

[A.S.], myself and [T.H.] and [T.K.], we all went to the Law Society office.

Q Okay.

A And we had been in contact with Ross McLeod the day previous throughout the day discussing the situation, and we had indicated to him that we were coming up to the office to meet with him. So Ross McLeod was here at the office. Whether it was around noon or thereabouts, 12:30, perhaps 1:00, when we were here meeting. And we indicated to Ross McLeod that we didn't think or know if Shawn had reported himself, but it was past noon and so we were here to report Shawn. And then – then it became clear that Shawn had, in fact, reported himself by letter by that point.

Q How did you come to know that?

A I believe that Mr. – I believe that Mr. McLeod got that letter and was able to determine that Shawn did report himself.

68. Based on the testimony of the three associates, the Hearing Committee concluded that Mr. Beaver was forced by the associates to report to the LSA and that Mr. Beaver would have continued the behaviour if he could have found a way to replenish the trust accounts sufficiently to make it another month or months. There is no evidence to support the argument that the Hearing Committee misapprehended the two meetings and there was reasonable evidence to support this finding:

a) While none of the witnesses expressly stated that Mr. Beaver wanted to continue the behaviour of misappropriating trust funds, it is also clear that both B.L. and K.S. felt that the "plan" set forth by Mr. Beaver was improper.

b) None of the witnesses expressly stated that Mr. Beaver advised either his paralegal or his associates that he would have continued the behaviour if he could have found a way to replenish the trust accounts. However, the tenor of the meetings was such that it was well within the purview of the Hearing Committee to draw such an inference. Inferences drawn from the facts by the Hearing Committee should be respected and the Panel finds no articulable reason for disagreeing.

c) The ongoing misappropriations only came to the attention of the associates after Mr. Beaver's legal assistant brought the issue to light. There is nothing to suggest that Mr. Beaver would not have continued with the misconduct. At the second meeting with the associates the evidence from the associates was that

> Mr. Beaver was focused on keeping the law firm going and replenishing the trust account. Mr. Beaver was not concerned about the nature of his actions.

69. The Panel gives significant deference to findings of fact by the Hearing Committee, especially when assessing witness credibility. The Hearing Committee had the benefit of hearing *viva voce* evidence from these witnesses. The Panel therefore finds that the conclusion by the Hearing Committee that Mr. Beaver "would have continued with his behaviour if he could have found a way to replenish the trust accounts" was reasonable in all of the circumstances.

Targets of Misappropriation

70. Paragraph 11 of the Sanction Decision states, in part:

> The facts disclose a significant misappropriation, arguably amongst the most serious. The Committee found that:
> ….
> - The targets of the misappropriation included clients of Mr. Beaver, his associates and staff.
> - The targets of the misappropriations included particularly vulnerable people, including disabled people and children.

71. Mr. Beaver argues that these findings are factually incorrect and misleading for the following reasons:

a) The reference to children refers to monies being kept in trust by an associate for the benefit of that associate's deceased brother's children. Mr. Beaver was not specifically targeting these trust monies; he was targeting a pooled trust account. Trust monies taken are deemed to come, pro rata, from each client and to suggest that trust monies were specifically taken from a child is unnecessarily sensationalizing what transpired.

b) There is no evidence that Mr. Beaver misappropriated trust funds from his associates or staff.

72. While it appears that no specific trust funds were targeted by Mr. Beaver, it is not unreasonable to conclude that the trust funds taken may have reasonably included funds of the deceased brother's children. Mr. Beaver would have known that the associate had funds in trust and that the shorting of the trust account could very well include the funds held for the associate. There is nothing in the Sanction Decision which sensationalized or exaggerated the effects of the misappropriation.

73. The Hearing Committee did not expressly say that Mr. Beaver misappropriated trust funds from his staff. What they said in the Sanction Decision was that the "targets of the misappropriation" included staff. The general firm account had little or no funds when

matters first came to light, which would have certainly placed staff at risk of not being paid. In that sense it is not unreasonable to say that the staff were also being targeted, albeit indirectly.

Characterization of Trust Transactions

74. Paragraph 11 of the Sanction Decision also found that the "misappropriations were covered up in Mr. Beaver's trust account by fictional accounting entries." Mr. Beaver takes exception to this characterization of his conduct in that he covered up accounting transactions. In the first instance, Mr. Beaver would bill out an account for work that had not yet in fact been done and then a trust payment would follow. While this is strictly against the Rules, Mr. Beaver says he did not cover anything up – accounts were issued and existed. In the second type of transaction a Statement of Account was identified as "paid" and transferred from trust to the general account before the funds were actually received, and in some cases the funds were never received. In this case the trust transaction was accurately recorded and there was no attempt by Mr. Beaver to "disguise" or "cover up".

75. This argument lacks validity since Mr. Beaver clearly intended to mislead clients, staff and the LSA about the true nature of his trust account activities. The conduct was done for the purpose of concealing the trust account shortfalls and manipulating the accounting records. The fact that Mr. Beaver did not try to cover up these manipulations does not render moot the conclusion that he was disguising and hiding his misappropriations.

Credit for Guilty Pleas and Admissions

76. Paragraph 21 of the Sanction Decision states:

> The Committee considers Mr. Beaver's acceptance of underlying facts and responsibility as adequate under the circumstances, but certainly less than enthusiastic. Mr. Beaver did make some admissions of fact and responsibility in the Agreed Statement but they were economical. The Committee accepts without reservation that Mr. Beaver has the right to put the Law Society to the proof of its case and finds no particular fault with his handling of the investigation and hearing. In the end, the reporting and conduct of these matters is a neutral factor in the Committee's considerations, neither aggravating nor mitigating.

77. Mr. Beaver points out that he admitted responsibility at an early stage and told the truth throughout the investigation. Mr. Beaver's statements to the investigators were comprehensive in accepting responsibility and he did not mislead the investigators. Mr. Beaver gave all personal bank records and information regarding D.I. to the LSA at a time when the LSA had none of this information. For all of this he is entitled to mitigation and credit. Mr. Beaver also notes that he did have a choice not to self-report and that this would have made the work of the LSA much more difficult.

78. The Hearing Committee clearly considered the admissions and self-reporting as factors. The Hearing Committee simply did not find such factors to be either mitigating or aggravating. It was within the domain of the Hearing Committees to assess and weigh mitigating factors and there is nothing unreasonable about the conclusions reached in paragraph 21 of the Sanction Decision.

Medical Diagnoses

79. At the hearing the LSA submitted an expert report from a psychiatrist, Dr. C.E., who was an addiction specialist and medical review officer. The gist of this report was that Mr. Beaver did appear remorseful towards any potential victims, that his risk of occupational relapse was "elevated" and that there was little or no evidence of any cognitive impairment that would have compromised Mr. Beaver's autonomy of action. Dr. C.E. stated that he was "unable to confirm that, but for the diagnoses [mental health and addictions issues] Mr. Beaver would have engaged in the alleged misconduct."[12]

80. Mr. Beaver submitted the following medical evidence:

    a) Dr. [B.K.] was asked to submit an Independent Medical Evaluation (IME). This IME had been the purpose of an application for disability insurance some 16 months prior to the sanctioning hearing. This report found that Mr. Beaver was suffering from an untreated Depressive Disorder and alcoholism during the time of the misappropriations.

    b) Dr. [S.D.] was Mr. Beaver's treating psychiatrist and he reported that he was treating Mr. Beaver for Major Depression and Alcohol Dependence.

    c) Dr. [B.F.] was the treating psychologist for Mr. Beaver and was of the opinion that Mr. Beaver's severe depression, anxiety and stress, coupled with alcohol, would have adversely impacted his ability to function in a law practice.

    d) Dr. [K.P] was Mr. Beaver's general physician and his letter offered the opinion that the untreated depression and related cognitive decline impacted the "impugned actions" of Mr. Beaver.

81. Mr. Beaver raises a number of arguments regarding how the Hearing Committee failed to properly address, consider and weigh Mr. Beaver's medical evidence:

    a) The Hearing Committee speculated about what information the medical team had, concerning the breadth of the misappropriation when no evidence was tendered to suggest that Mr. Beaver misrepresented the reality of his situation to the medical professionals.

[12] Page 26, paragraph of Dr. CE Report.

b) At paragraph 28 of the Sanction Decision, the Hearing Committee stated in part: "But as the reports do not deal directly with the severity of the misappropriations, they are of limited assistance." Mr. Beaver takes exception to this statement in view of his medical reports disclosing that he was suffering from a major depressive episode coupled with alcohol abuse.

c) Mr. Beaver believes that the Hearing Committee may have discounted an IME submitted by Mr. Beaver that arose from a disability insurance claim made by Mr. Beaver due to whether the insurer had consented to the use of the IME in the hearing.

d) Mr. Beaver takes exception to paragraph 36 of the Sanction Decision where the Hearing Committee stated that "[t]he stressors alleged to have affected the behaviour were stressors to which any senior practitioner may be subject" and at paragraph 19 where the Hearing Committee stated:

> The misappropriation did occur at a time of personal high stress for Mr. Beaver, a perfect storm of financial, personal and medical issues. The Committee members can be personally empathetic for this difficult time. But the stressors of Mr. Beaver's years of 2014 and 2015, downturns in the financial success of a practice, marital breakup and re-partnering, and the mortality of a loved family member are all part of the predictable demographic transitions of a modern long life. These transitions must be managed by us all with a view to fulfilling our obligations of integrity, notwithstanding the sometimes difficult reality of a horrible year ("… to the ends of the earth…" as per *Bolton*).

e) Mr. Beaver argues that the Hearing Committee erred in minimizing the medical diagnoses of depression and alcoholism by referring to them as being nothing more than the ordinary stressors that are expected of practitioners in the demographic of Mr. Beaver. Mr. Beaver points out that at the relevant time he was suffering from a major depressive order and alcohol dependence. These conditions could affect one's judgment and lead to behaviour such as violating trust and conduct rules. Mr. Beaver further argues that major depressive disorder is a recognized medical disorder and that the statements in paragraphs 36 and 19 appear to endorse discredited and antiquated stereotypes regarding that those with a mental illness are "weak" or "lack backbone".

82. On each of these arguments the Panel finds:

a) The Hearing Committee stated: "The Committee accepts that a physician's report may not contain an accurate transcript of all that a patient declares to them. We cannot go so far as to find that the economy of these reported declarations from Mr. Beaver are dispositive proof of an acceptance of responsibility for the

misappropriations, or not."[13] No where does the Hearing Committee speculate about what information Mr. Beaver provided to his medical team. The Hearing Committee in fact reaches the opposite conclusion; that they cannot, in fact, know what Mr. Beaver advised his doctors.

b) None of the medical reports submitted by Mr. Beaver, in fact, make any reference to the severity of the misappropriations, which the Hearing Committee reasonably felt was an important factor in weighing these reports. Dr. [K.P.] referenced "impugned actions"; Dr. [B.P.] stated that Mr. Beaver was "suspended" and "facing possible disciplinary action"; Dr. [S.D.] makes no mention of the misconduct; Dr. [B.K.] refers to Mr. Beaver "not working due to his license being suspended" and that "he is facing possible disciplinary or even legal action.". The Hearing Committee felt the medical evidence was of "limited assistance" because those medical reports did not "deal directly with the severity of the misappropriations"[14].

c) The IME from Dr. [B.K.] was done on October 29, 2015. The IME was directed to an insurance company in support of a claim being made by Mr. Beaver. The IME was not done specifically for sanctioning purposes. There is nothing in the Sanction Decision to suggest that the Hearing Committee discounted the IME. All that was stated by the Hearing Committee was that it was not clear that the "insurer had consented to the use of the IME in these proceedings, however the report was put before the Committee without objection by counsel for the Law Society."[15]

d) The express statements by the Hearing Committee did not specifically reference Mr. Beaver's depressive disorder or alcohol dependency issues. The "stressors" being referenced by the Hearing Committee were specifically aimed at financial stresses of running a law practice, the breakup of Mr. Beaver's marriage and re-partnering and the loss of a loved family member. There is nothing unreasonable about the Hearing Committee stating that these types of stressors were all part of a "modern long life."

83. It is clear from the Sanction Decision that the Hearing Committee was aware of the medical diagnosis, and it cannot be said that they did not consider this as a mitigating factor. However, the Hearing Committee did not find any causal link between the addiction or mental health issues that would account for the misconduct. The Hearing Committee was well within their prerogative to find that the medical evidence was not a factor that supported Mr. Beaver's argument that his mental and addiction issues were at the heart of his actions. The Hearing Committee acknowledged Mr. Beaver's medical problems in its reasons. The Hearing Committee understood those medical issues, but they did not

[13] Paragraph 28 of the Sanction Decision.
[14] Paragraph 28 of the Sanction Decision.
[15] Paragraph 25(a) of the Sanction Decision.

accept the argument that these medical states were causally connected to the conduct. The Hearing Committee found that the medical evidence put forth by Mr. Beaver was lacking in both quality and quantity. These conclusions were reasonable on the facts before the Hearing Committee.

84. The Hearing Committee also found that the medical reports from Mr. Beaver were obtained after the apex of the misconduct and in many respects the medical reports were brief. In this regard the Hearing Committee placed limited weight on Mr. Beaver's medical evidence in assessing both the medical issues and any allegations of a causal link between the misconduct and those issues.

85. The fundamental issue for sanctioning in this case revolved around integrity. In this regard the Hearing Committee found that Mr. Beaver's "actions were intentional and not merely negligent or inadvertent."[16] These actions took place over a long period of time in growing amounts, which trust monies were either directly or indirectly being used for the benefit of Mr. Beaver. The Hearing Committee concluded that the "behaviour was intentional and dishonest."[17]

ANAYLSIS: COSTS

86. Mr. Beaver asserts that the costs awarded were excessive and were based on a misunderstanding of the facts. The basis for seeking a reduction in costs was due to the LSA making the decision to bring in a private second senior lawyer to assist LSA counsel. This resulted in an additional cost of $30,000. The Hearing Committee referred to it as a "complicated case', but at the same time the Hearing Committee found that there was very little disagreement as to the underlying facts. Mr. Beaver states that this was not a complex case, and a second counsel was an unnecessary luxury.

87. On this point of contention, the Hearing Committee reduced the costs from $158,739.10 to $120,000.00. At paragraph 38 of the Sanction Decision the Hearing Committee sets out its reasons for the reduced costs, including that Mr. Beaver was successful in his defence of some of the citations, that Mr. Beaver made successful pre-hearing disclosure applications and that the LSA "carrying the burden of proof in a complicated case was entitled to the assistance of some (but perhaps not all) of second counsel."

88. The Hearing Committee had therefore considered the extra costs associated with a second counsel and this was already a factor in reducing costs. A factually straight forward matter does not necessarily mean that a matter is not complicated. The Hearing Committee had already considered the issue of second counsel and this Panel is not prepared to reduce costs any further.

Jinnah v. Alberta Dental Association and College

[16] Paragraph 58 of the Hearing Committee Report.
[17] Paragraph 58 of the Hearing Committee Report.

89. On the day of the Appeal Hearing, counsel for Mr. Beaver submitted a recent decision by the Alberta Court of Appeal in *Jinnah v. Alberta Dental Association and College.*[18] This case dealt with a dentist who had engaged in certain billing practices and whether those practices amounted to unprofessional conduct. The College's appeal panel reprimanded the dentist for unprofessional conduct and ordered her to pay hearing tribunal costs of $37,500 and one-quarter of the appeal panel costs. The $37,500 was twenty percent of the costs of the College for a two-day hearing and one-quarter of the costs before the appeal panel.

90. The *Jinnah* case, in addition to dealing with the findings of unprofessional conduct, also addressed the issue of costs awarded by a hearing panel. The Alberta Court of Appeal agreed that a reprimand was appropriate, but they set aside the cost award of $37,500 and they referred the costs issue back to the appeal panel for reconsideration. The Court found the award of costs excessive given that the matter involved one allegation by a single patient unrelated to patient care which was on the low end of the seriousness scale.

91. The Court of Appeal stated that this decision on costs was applicable to all professionals "regulated by the *Health Professions Act*."[19]

Applicability to Legal Profession Act

92. It is the view of this Panel that the *Jinnah* case is not applicable to cost matters governed under the *Act*.

93. We begin with section 49(2)(c) of the *Act*, which provides that costs, in reference to conduct proceedings, are those that are "determined in accordance with the rules as being attributable to those proceedings." Section 72 of the *Act* creates a discretion to award costs, but the *Act* does not require that costs be awarded.[20] The default rule is that a member found guilty of conduct deserving of sanction should be required to pay the actual costs of the proceedings that led to the finding of guilt.[21] Those actual costs and expenses are particularized under Rule 99(1), which allows for, among other things, for "hearing charges at a rate prescribed by the Benchers".

94. The Panel takes note of the Costs for Hearings/Reinstatements tariff, upon which LSA's all current costs calculations are based, was approved by the Benchers in 1999.

95. While Rule 99(a) particularizes costs, it does not oust the discretion of a Hearing Committee in respect of the awarding of costs.[22]

Historical Approach to Costs

[18] *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336.
[19] *Jinnah* at paragraph 140.
[20] *Law Society of Alberta v. Torske*, 2016 ABLS 27 (CanLII) at paragraph 40.
[21] *Law Society of Alberta v. Torske*, 2016 ABLS 27 (CanLII) at paragraphs 37 and 40.
[22] *Law Society of Alberta v. Torske*, 2016 ABLS 27 (CanLII) at paragraph 29.

96. The general approach to costs was articulated by the Alberta Court of Appeal in *K.C. v. College of Physical Therapists of Alberta*[23] where the Court stated at paragraph 94:

> The fact that the *Act* and *Regulation* permit the recovery of all hearing and appeal costs does not mean that they must be ordered in every case. Costs are discretionary, with the discretion to be exercised judicially. Costs awards of disciplinary bodies are subject to judicial review on a standard of reasonableness: *Brand v. College of Physicians and Surgeons* (1990), 1990 CanLII 7711 (SK CA), 86 Sask. R. 18 at 24 (Sask. C.A.). Costs awarded on a full indemnity basis should not be the default, nor, in the case of mixed success, should costs be a straight mathematical calculation based on the number of convictions divided by the number of charges. In addition to success or failure, a discipline committee awarding costs must consider such factors as the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts. Costs are not a penalty, and should not be awarded on that basis. When the magnitude of a costs award delivers a crushing financial blow,(citation omitted) it deserves careful scrutiny: *Nassar v. College of Physicians of Surgeons (Manitoba)* (1994), 1994 CanLII 16769 (MB KB), 96 Man. R. (2d) 141 (Q.B.), affirmed [1995] M.J. No. 548, (C.A.), online: QL (MJ). If costs awarded routinely are exorbitant they may deny an investigated person a fair chance to dispute allegations of professional misconduct: *Lambert v. College of Physicians and Surgeons (Saskatchewan)* (1992), 1992 CanLII 8212 (SK CA), 100 Sask. R. 203 at 204-05 (Sask. C.A.).

97. This same approach to costs was further set out by the Alberta Court of Appeal in *Wright v. College and Assn. of Registered Nurses of Alberta*[24] where the Court upheld the award of costs by the disciplinary panel. The Court stated at paragraph 75:

> Professional disciplinary bodies have a wide discretion over costs, and so long as the decision is justifiable, transparent and intelligible, judicial intervention is not warranted. The tribunals below were aware that they were not required to award the College any costs, although they did have the jurisdiction under the *Health Professions Act* to award full indemnity costs. They gave consideration to, but rejected, the argument that because these were test cases, the general membership should bear the expense. They were sensitive to the fact that a costs award should not be crushing. The costs awards were reasonable, and variation is not warranted.

98. This discretionary approach was further accepted by the Alberta Court of Appeal in *Al-Ghamdi v. College of Physicians and Surgeons*[25] where the Court stated at paragraph 48:

[23] *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253 (CanLII).
[24] *Wright v College and Assn. of Registered Nurses of Alberta*, 2012 ABCA 267.
[25] *Al-Ghamdi v College of Physicians and Surgeons*, 2020 ABCA 71.

> 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: *C. (K.) v. College of Physical Therapists (Alberta)*, 1999 ABCA 253 (Alta. C.A.) at para. 94, (1999), 72 Alta. L.R. (3d) 77, 244 A.R. 28 (Alta. C.A.). The costs award here is substantial, but on this record it is not unreasonable. No reviewable error has been shown.

99. More recently, in the *Tan v Alberta Veterinary Medical Association*[26] decision, the Alberta Court of Appeal, at paragraph 46, indicated that the "appropriate approach to costs in the disciplinary process" are those factors as set out at paragraph 94 of the *K.C. v. College of Physical Therapists of Alberta*.

Jinnah Case Distinguished

100. The Panel appreciates that the statutory provisions concerning costs in the *Health Professions Act* and the *Legal Profession Act* are broadly similar in that both contain a prescribed list of expenses that a hearing tribunal may order. In this sense there is some merit to suggesting that the *Jinnah* case is applicable. However, we would distinguish the *Jinnah* case for the following reasons:

    a) The decision only dealt with the cost regime under the *Health Professions Act*.

    b) The Court in *Jinnah* did not expressly overturn the *Tan* decision.

    c) *Jinnah* references the decision in *Tan* with approval in footnotes 183, 201 and 205 of the *Jinnah* case.

    d) Given that the *Tan* decision sets out a very different conceptual framework compared to the one espoused in the *Jinnah* decision, the Court's referencing and approval of the *Tan* case would suggest that the Court was not intending that the principles in *Jinnah* extend beyond the *Health Professions Act*.

    e) The Court further referenced with approval the factors set out in the *K.C. v. College of Physical Therapists of Alberta* decision, which case was further approved in *Tan.*

Jinnah Case Considered

[26] *Tan v. Alberta Veterinary Medical Association*, 2022 ABCA 221.

101. In the event that we are wrong in distinguishing the *Jinnah* case, we would still conclude that the awarded costs against Mr. Beaver be upheld based on the factors as elaborated in the *Jinnah* case.

102. The *Jinnah* case relies in part on the decision in *Alsaadi v. Alberta College of Pharmacy*[27] where the Court of Appeal at paragraph 130 set out the following process for determining costs:

    a) A hearing tribunal should first consider whether a costs award is warranted.

    b) If so, then the next step is to consider how to calculate the amount. In this regard what expenses should be included, should it be a partial or full amount of the expenses and is the final amount reasonable?

103. The starting presumption articulated by the Court in *Jinnah* for addressing an award of costs is that "the profession as a whole should bear the costs in most cases of unprofessional conduct."[28]

104. On the issue of determining whether an award of costs is warranted, the Court set out some general principals:

    a) Costs are "not supposed to be a sanction"[29] and nor are costs "to be punitive in nature."[30]

    b) Costs in a "disciplinary context are discretionary and subject to the standard of reasonableness".[31]

    c) At paragraph 129: "This Court in *K.C. v. College of Physical Therapists of Alberta* held that the College must consider factors "in addition to success or failure" including the "seriousness of the charges, the conduct of the parties and the reasonableness of the amounts" when determining whether to impose costs and in what amount."

105. The *Jinnah* decision establishes that as a general principle, the commission of unprofessional conduct by itself does not allow a hearing panel to impose a significant portion of the costs of an investigation into and hearing of a complaint on a disciplined dentist unless a compelling reason to do so exists.[32] As noted above, the presumption is that the regulatory body should bear costs in most cases of unprofessional conduct.

[27] *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313.
[28] *Jinnah* at paragraph 145.
[29] *Jinnah* at paragraph 124.
[30] *Jinnah* at paragraph 127.
[31] *Jinnah* at paragraph 125.
[32] *Jinnah* at paragraph 138.

106. In order to rebut this presumption of “no costs”, a regulatory body will need to establish “compelling reasons”. These “compelling reasons” were more particularized in the *Jinnah* case at paragraph 21, where the Court stated in part that a professional disciplinary body should bear the “costs associated with the privilege and responsibility of self-regulation unless a member has committed serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators, or has engaged in hearing misconduct”. The Court expanded upon these four different scenarios for compelling reasons as follows:

> [141] First, a dentist who engages in serious unprofessional conduct — for example, a sexual assault on a patient, a fraud perpetrated on an insurer, the performance of a dental procedure while suspended or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care — can justifiably be ordered to indemnify the College for a substantial portion or all of its expenses in prosecuting a complaint. A dentist guilty of breaches of this magnitude *must have known* that such behavior is completely unacceptable and constitutes unprofessional conduct. It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint.
>
> [142] Second, a dentist who is a serial offender engages in unprofessional conduct on two or more occasions may be ordered to pay some costs. If a dentist is guilty of two acts of unprofessional conduct and both of the findings of unprofessional conduct were serious breaches, a costs order indemnifying the College for a substantial portion or all of its expenses would be appropriate. If both breaches were not serious, a small amount of costs — something less than twenty-five percent — could be justified. If only the first breach was serious and the dentist had already been ordered in a previous proceeding to pay a substantial costs order on account of the serious offence, a small costs order for the second breach may be appropriate. If only the second breach was serious, a costs order indemnifying the College for a substantial portion or all of its costs would be appropriate. There is a big difference between a dentist who has been sanctioned once and a dentist who has been sanctioned two or more times. A dentist who has been sanctioned once should be extra vigilant in how he or she practices dentistry. It seems to us, based on our review of the College's 2019, 2020 and 2021 annual reports and the decisions finding unprofessional conduct published on the College's website, that only a very small percentage of dentists engaged in active practice have ever been sanctioned. And of this group, we strongly suspect that an even smaller fraction are repeat offenders. It is not unfair to place on the shoulders of this small group of dentists a disproportionate share of the costs of implementing the discipline process.
>
> [143] Third, a dentist who fails to cooperate with College investigators and forces the College to expend more resources than is necessary to ascertain the

> facts related to a complaint cannot, with justification, object when ordered to pay costs set at an amount roughly equal to the unnecessary expenditures attributable to his or her intransigence.
>
> [144] Fourth, a dentist who engages in hearing misconduct — behavior that unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable — should expect to pay costs that completely or largely indemnify the College for its unnecessary hearing expenditures.

107. The *Jinnah* decision offered some guidance on how a disciplinary body should determine the amount of costs a regulator incurs in prosecuting at paragraphs 142 to 144:

    a) For a serial offender who commits two not serious breaches, costs would be something less than twenty-five percent.

    b) Again, for a serial offender whose first breach was serious and where substantial costs were ordered, but whose second breach was minor, then a small costs order for the second breach may be appropriate.

    c) Where a member forces a regulatory body to justifiably expend more resources than necessary to obtain facts or evidence, then the member should be ordered to pay costs at an amount equal to the necessary expenses attributable to his or her obstinance.

    d) If a member unnecessarily prolongs a hearing that results in increased costs of prosecution that are not justifiable, then the member should pay costs that completely or largely indemnify the regulatory for unnecessary hearing expenditures.

Mr. Beaver's Misconduct

108. The Hearing Committee clearly found the misconduct of Mr. Beaver to be very serious professional misconduct. That conduct would therefore fall within the category of someone who has committed "serious unprofessional conduct". Given also that the misconduct of Mr. Beaver involved multiple citations and acts of misconduct, this would reasonably raise the misconduct to the "serial offender" status.

109. At paragraph 141 of the *Jinnah* case the Court of Appeal provided an example of unprofessional conduct as including "fraud on an insurer". The Hearing Committee was of the view that the misappropriation of trust funds raised a serious integrity issue and like fraud, would fall under the category of "serious unprofessional conduct". We therefore would conclude that the award of costs should not be varied based on the principles set out in *Jinnah*. In particular, the misconduct was both of a very serious nature and involved multiple citations.

110. In view of the seriousness of Mr. Beaver's misconduct the Panel finds that he should be responsible for all of the costs awarded by the Hearing Committee.

DECISION OF THE APPEAL PANEL

111. After reviewing the hearing record, which includes the Merits Decision and Sanction Decision, considering the representations of the LSA and Shawn Beaver, and for the reasons set out herein, the Panel confirms the Hearing Committee's finding of guilt. We find the Merits Decision was both reasonable and sustainable.

112. The Panel also confirms the Hearing Committee's determination on sanction and the award of costs. The Sanction Decision was reasonable and was neither demonstrably unfit or based on any error in principle or law.

CONCLUDING MATTERS

113. Given that the Panel has dismissed Mr. Beaver's appeal, the LSA is entitled to its costs in this appeal, ordered by the Panel to be payable within three months of this written decision. LSA counsel is to prepare a Statement of Costs and provide it to the Chair of the Panel, within one week of this decision, for review and approval. The parties may make brief written submissions regarding costs of the appeal, if they so wish, within one month of this written decision.

114. The exhibits, 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 Shawn Beaver will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated March 6, 2023.

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Bud Melnyk, KC

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Ryan Anderson, KC

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Kene Ilochonwu, KC

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Stacy Petriuk, KC

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Ron Sorokin

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