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

AND

IN THE MATTER OF AN APPEAL
REGARDING SANJEEV SHARMA
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Appeal to the Benchers Panel

Kathleen Ryan, QC – Chair
Bill Hendsbee, QC – Bencher
Cal Johnson, QC – Bencher
Linda Long, QC – Bencher
Barbara McKinley – Lay Bencher
Darlene Scott, QC – Bencher
Cora Voyageur – Lay Bencher
Louise Wasylenko – Lay Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Alain Hepner, QC – Counsel for Sanjeev Sharma

Hearing Date

October 16, 2020

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

Overview and Summary of Decision

1. Sanjeev Sharma ("Mr. Sharma") was an articled student-at-law in 2016 and 2017. Mr. Sharma's Articles of Clerkship ("Articles") commenced on July 26, 2016. Several weeks later, his principal reduced his hours to one day per week because of performance concerns. The effect of the new articling arrangement meant that Mr. Sharma was fulfilling only 20% of his Articles from September 16, 2016 through March 7, 2017. In March 2017, Mr. Sharma's principal terminated his employment, again citing poor performance. Mr. Sharma was able to transfer his Articles to a new principal. However,

when interviewing for the job, Mr. Sharma did not tell his new principal of his part-time status; instead, he told him he had only three or four months left in his Articles. Mr. Sharma did not tell his new principal of the competency concerns of his former principal. Instead, Mr. Sharma told him that his former principal lacked workload and office space. Further, when directly asked in June 2017, Mr. Sharma told the LSA that he had worked three days per week, instead of one day per week from September 2016 through March 2017.

2. The LSA brought citations against Mr. Sharma for failing to be candid with both his new principal and the LSA. A Hearing Committee (the "Committee") convened October 16, 2019 (the "Hearing") and delivered its decision on January 7, 2020 (the "Decision").[1] The Committee found Mr. Sharma guilty on both citations and, noting that his lack of integrity went to the root of the LSA's regulatory role, ordered that he be de-registered as an articling student. This order is tantamount to a disbarment.

3. Pursuant to section 75 of the *Legal Profession Act,* RSA 2000, c. L-8 (the "*Act*"), Mr. Sharma appeals the finding of guilt on Citation 2, failure to be candid with his new principal. He also appeals the de-registration sanction.

4. Mr. Sharma's appeal was heard October 16, 2020 before an appeal panel of eight Benchers (the "Appeal Panel"). The Appeal Panel dismisses the appeal from the finding of guilt on Citation 2 but allows the appeal on sanction and directs the sanction be varied to a suspension of one year plus a day for the reasons set out below.

Preliminary Matters

5. There were no objections to the constitution of the Appeal Panel or its jurisdiction. A private hearing was not requested, so a public appeal hearing proceeded via video conference.

The Evidence and the Committee Decision

6. The relevant evidence at the Hearing was as follows. In 2016, Mr. Sharma was an articling student in Alberta following receipt of his National Committee on Accreditation (NCA) Certification in April 2016. Mr. Sharma received his law degree in India in 1987. He had worked for many years in banking and was 63 years old at the time of the Hearing. Mr. Sharma began working for his first principal in April 2016 and signed articles of clerkship with that principal on June 21, 2016 ("Signed Articles of Clerkship"). The Signed Articles of Clerkship were received by the LSA on June 24, 2016. The articling period was to be 12 months commencing July 26, 2016.

7. Mr. Sharma's first articling position went poorly. Mr. Sharma's principal said that he was slow, made too many errors, and needed constant supervision. As a result of Mr.

[1] *Law Society of Alberta v. Sharma*, 2020 ABLS 1.

Sharma's poor work performance, the principal changed the terms of his employment and reduced his hours under a new employment agreement from a full-time position to a part-time position, one day per week, effective September 16, 2016.

8. At that time, neither the principal nor Mr. Sharma updated the LSA as to Mr. Sharma's change from full-time articling student status to part-time status. The Signed Articles of Clerkship were neither changed nor resubmitted to the LSA.

9. Mr. Sharma's principal did not tell Mr. Sharma that the effect of reducing his employment hours from full-time to 20% of full-time would have the consequential impact of significantly extending his articling period. Indeed, at that rate, Mr. Sharma would not have been able to finish his articling term in the time allowed by the Signed Articles of Clerkship or the LSA Rules (the "Rules").[2] Nothing in the new employment agreement spoke to Mr. Sharma's status as an articling student; however, the term of the part-time employment agreement was ten months. This coincided with the end of the twelve months in the Signed Articles of Clerkship. The new agreement further provided that the principal could terminate Mr. Sharma's employment at any time without cause or reason.[3] Under the new agreement, Mr. Sharma was paid $500 per month plus a small incentive for new business. Mr. Sharma was responsible for his own LSA and CPLED expenses.

10. In January 2017, Mr. Sharma sought and obtained approval from his principal for a one-month leave to attend his daughter's wedding in India. The leave spanned February 2, 2017 to March 2, 2017. Mr. Sharma's principal approved the leave on the basis that he would make up that time by working extra time in January and he did so. Immediately on return to work from that trip on Monday, March 6, 2017, Mr. Sharma learned that his employment, and hence his Articles, had been terminated by his principal. That day, he arrived for work only to find that he had been locked out of his principal's office. The termination letter was dated February 27, 2017, and was expressed to be effective February 28, 2017, but was only provided to Mr. Sharma on March 6, 2017.

11. Mr. Sharma's principal suggested he quickly obtain replacement Articles. Mr. Sharma met with a prospective new principal that same day. In that meeting, Mr. Sharma did not advise the new principal that he had been working part-time. Instead, he told him that there were only three or four months left in his Articles. Nor did he advise his new principal of the challenges he had working as a student. Instead, Mr. Sharma said that his former principal did not have sufficient space or workload to accommodate him. The new principal hired Mr. Sharma the next day, March 7, 2017.

[2] The Rules do not expressly require articles to be performed on a full-time basis. However, at that time, a 12-month term of articles was required to be completed within a period of two years absent extension from the Executive Director of the LSA or the Credentials and Education Committee.

[3] Termination of employment without cause required two weeks written notice, or payment in lieu of notice, or a combination of notice and pay.

12. At the Hearing, the former principal said that she had ample work and space for Mr. Sharma. The former principal's office premises comprised a single room with three desks. The principal often worked remotely and provided email or phone instructions to her employees. However, the principal gave very clear evidence that it was Mr. Sharma's performance that was the problem, not the workload or the office space. That evidence was accepted by the Committee.

13. After termination of employment, the former principal, the new principal, and Mr. Sharma together signed an Assignment of Articles of Clerkship (the "Assignment") on March 7, 2017. In the Assignment, Mr. Sharma and his former principal referenced that the Articles began July 26, 2016 and were for a term of 12 months. In the Assignment, there was no mention of part-time status or the September employment agreement. The LSA approved the Assignment by letter dated March 17, 2017.

14. In May 2017, the LSA emailed Mr. Sharma and his former principal and requested that the former principal sign an evaluation certificate and certificate of principal in order for Mr. Sharma to receive credit for that portion of his Articles. The former principal was at first reluctant to complete the form, but then completed the evaluation and stated that Mr. Sharma had worked full-time from July 26 to September 16, 2017 and part-time from September 17, 2016 to March 7, 2017. The LSA followed up directly with the former principal in June 2017 to determine the part-time status. The principal explained that Mr. Sharma worked 9 hours, once per week (Mondays) with a 30-minute break in the day. The record of the Hearing proceedings ("Record") shows that Mr. Sharma was not copied on this email exchange between his former principal and the LSA.

15. On June 21, 2017, the LSA emailed Mr. Sharma directly to ask him what his hours had been while working part-time. The LSA representative very clearly explained that, if part-time, the credit for the articling term would need to be pro-rated based on the number of hours per week that Mr. Sharma had worked.

16. Mr. Sharma knew that he worked full-time from approximately from July 26, 2016 to September 16, 2016 and, thereafter, the equivalent of one day per week until the Assignment. However, Mr. Sharma did not tell this to the LSA. Mr. Sharma instead emailed the LSA on July 13, 2017. In that email, Mr. Sharma said that he worked three days per week from September 16, 2016 to March 7, 2017.

17. Mr. Sharma had worked significantly less than what he represented to the LSA. The effect of that representation to the LSA meant that, in that 25-week period, Mr. Sharma represented that he worked 50 more days than he had actually worked, thereby implying that his Articles were at least two months further along than they really were.

18. The LSA laid citations against Mr. Sharma that he misled the LSA and that he misled his new principal, both of which actions were alleged to be conduct deserving of sanction.

19. On October 16, 2019, the Committee convened the Hearing into the conduct of Mr. Sharma based on two citations:

> Citation 1: It is alleged that Sanjeev Sharma failed to be candid with the Law Society of Alberta and that such conduct is deserving of sanction; and,
>
> Citation 2: It is alleged that Sanjeev Sharma failed to be candid with his principal and such conduct is deserving of sanction.

20. Mr. Sharma signed a Statement of Admitted Facts prior to the Hearing (the "Admitted Facts"). The Admitted Facts were tendered as an ordinary exhibit at the Hearing. That is, the Admitted Facts were tendered for their truth, but the LSA was at liberty to contest Mr. Sharma's statements and adduce its own evidence.

21. Respecting Citation 2, Mr. Sharma admitted that he told his new principal that he only had "three or four months" to go for the articling period. Mr. Sharma further told him that his former principal was not very busy and there was not enough workspace at the office.

22. Mr. Sharma also stated in the Admitted Facts that the new principal "would not say that I was lying or dishonest, but in hindsight, I think we both believe that I should have advised him of previously articling part time when I first approached him." Other than this statement, there was no evidence adduced directly, or indirectly, respecting the new principal's view of Mr. Sharma's character and integrity. Mr. Sharma continued working for the new principal, full-time, for years after these events came to light. In so far as the Appeal Panel is aware, Mr. Sharma continues to work for the new principal.

23. Other than the citations themselves, there was no suggestion in evidence that Mr. Sharma was dishonest or lacked integrity in performing his duties as an articling student for either his former or new principal. Mr. Sharma's problems, according to his former principal, related to competence and that he made too many errors, was too slow and needed too much supervision.

24. The Committee found that the LSA had proven both citations. The Committee found that there was no question that Mr. Sharma lied to his regulator. The Committee found that Mr. Sharma falsely misrepresented his hours worked in order to get more credit for his articling period. There is no appeal from this finding.

25. Likewise, the Committee found, on a balance of probabilities, that Mr. Sharma was not candid with his new principal. Mr. Sharma did not tell his principal he had been articling part-time, instead stating there were only three or four months to go in his Articles. The Committee found this was not truthful or candid.

26. Mr. Sharma told his new principal that the reason he lost his position was because office space was limited and his former principal was not that busy. The Committee also found these representations were neither truthful nor candid. In so finding, the Committee preferred the evidence of Mr. Sharma's former principal. The Committee found Mr. Sharma omitted and coloured the facts in seeking the replacement Articles and that, despite not being asked, he should have told his new principal about the concerns with his competency and abilities.

27. The Committee's reasons respecting Citation 2 are at paragraphs 21 through 24 of the Decision. The Committee undertook an analysis of the meaning of candour. The Committee held that candour was the quality of being forthcoming. In particular, the Committee held:

> Omitting or modifying salient information in situations where the reasonable person would expect that it would be disclosed demonstrates a lack of candour.

28. Mr. Sharma was found to have a duty to his new principal to properly inform him of all information known to the student that may affect the new principal's interests. This included an accurate description of the reasons for the termination of his Articles and the prior concerns respecting competency. The issue was not workspace or workload.

29. The Committee found that Mr. Sharma was "neither truthful or candid" in these statements "in the hope of gaining an advantage",[4] namely to obtain employment to complete his Articles. Accordingly, the Committee found Citation 2 had been proven on a balance of probabilities.

30. The Committee found no mitigating circumstances. It found that Mr. Sharma's conduct showed a lack of integrity which goes to the heart of lawyer regulation. The Committee stated:

> If the LSA is unable to reply upon the honest statements of its members, it will be difficult, if not impossible, to regulate the profession.[5]

31. The Committee was particularly concerned that Mr. Sharma, in a hearing where he contested his guilt, characterized his conduct as a mistake. On sanction, the Committee found that Mr. Sharma had not demonstrated appropriate remorse and that he failed to make a meaningful apology for his conduct. The Committee considered that Mr. Sharma felt he was a victim and that the LSA process had been a "hard time" for him. The Committee found that he "did not appear to appreciate the duty of a member to be forthright and honest in his dealings with the regulator."

[4] Decision paragraphs 21 and 23, respectively.
[5] Decision paragraph 19.

32. The Decision references four other LSA hearing or appeal decisions on sanction. The four decisions are as follows:

a. *Ihensekhien-Eraga*[6]: An articling student lied six separate times to the LSA. Her conduct was described by the Committee as "much more egregious" than Mr. Sharma's conduct. The student had previously been a lawyer in Nigeria for 15 years. The student sent a factum written by someone else to the LSA and passed off that work as her own in order to bypass certain articling obligations. She maintained her deception over time until it was impossible to deny the misconduct. It was a deliberate, calculated, shrewd attempt to mislead the LSA. Once the deception was finally uncovered, Ms. Ihensekhien-Eraga admitted her guilt and called evidence about the stressors she faced as a student and immigrant with three young children. She apologized in a way that the Hearing Committee found to be sincere and she pledged to do better. She had some early attempts at counselling. She received a one-year suspension and had to pay substantial costs for the investigation to uncover her wrongdoing.

b. *Cattermole*[7]: An articling student plagiarized portions of another student's CPLED assignment. When confronted, the student lied to CPLED and to her principal. Thereafter, she wrote a detailed letter of explanation and apologized. She explained a set of very compelling recent life events, including a personal breakup, her father's sudden death, and family issues surrounding it. Her doctor tendered evidence of an acute depressive disorder. She was under the care of a psychologist. The Committee noted that the effect of her conduct delayed her bar admission by two years. She lost her job and was terminated from the CPLED program but had found a job in British Columbia with a firm that previously employed her. That Hearing Committee found that the consequential impact the student suffered from her own conduct was sanction enough, but she was still required to pay the costs of the hearing.

c. *Rigler*[8]: An articling student lied on his application to the LSA respecting an alcohol related charge, including swearing a false statutory declaration. When confronted, he lied again. However, thereafter, he quickly admitted guilt and showed remorse. That Hearing Committee noted the major impact on Mr. Rigler's life and determined a three-month suspension would be appropriate.

d. *Zimmerman*[9]: An articling student stole money from her part-time employment and was convicted of fraud and forgery arising from efforts to deceive a lender into advancing her a loan. She forged paystubs as part of this scheme. The student was de-registered.

[6] *Law Society of Alberta v. Ihensekhien-Eraga* 2019 ABLS 16.
[7] *Law Society of Alberta v. Cattermole* 2008 L.S.D.D. 168.
[8] *Law Society of Alberta v. Rigler* 2008 LSA 10.
[9] *Law Society of Alberta v. Zimmerman* [2006] L.S.D.D. No 6.

33. The Committee noted that Mr. Sharma had admitted in his Admitted Facts that he misrepresented his hours to the LSA and that he should have made his part-time status clear to his principal.

34. However, the Committee determined Mr. Sharma "failed to provide a meaningful apology and demonstrate the remorse that one would have expected in all of these circumstances." The Committee found there was a lack of any evidence showing hardship or difficulty that could give rise to this behaviour. The Committee further found there was no evidence "whatsoever" provided in support of Mr. Sharma's character nor was there "any evidence" providing any explanation for his conduct.[10]

35. The Committee ordered that Mr. Sharma be de-registered as an articling student of the LSA. De-registration for an articling student is the equivalent of a disbarment.[11] The Committee recognized that this was an "extreme" measure.[12]

36. The Committee directed that Mr. Sharma pay hearing costs in the sum of $14,857.75 which sum must be paid prior to any future reinstatement.

Grounds of Appeal

37. Pursuant to section 75 of the *Act*, Mr. Sharma appeals the Decision respecting the finding of guilt on Citation 2 and respecting sanction. Mr. Sharma did not appeal the finding of guilt on Citation 1.

38. Mr. Sharma states that the Committee committed errors in the Decision respecting Citation 2 and sanction, which errors require the Appeal Panel to reverse the finding of guilt on Citation 2 and to, in any event, overturn de-registration as the appropriate sanction herein.

Submissions and Analysis

Standard of Review

39. The standard of review in appeals from administrative tribunals has been the subject of much recent judicial consideration. In late 2019, the Supreme of Canada provided new guidance in its landmark decision on standard of review for administrative decisions in Canada *(Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[10] Decision paragraphs 37 and 38.
[11] For the purposes of the *Act* at section 49(5), reference to a member includes student-at-law. Further, section 49(5)(b) provides that references to the disbarment of a member shall, in relation to a student-at-law, be read as references to the termination of the registration of the student-at-law.
[12] Decision paragraph 33.

40. In Alberta, the Alberta Court of Appeal has issued at least three decisions in 2020 alone which consider the standard of review respecting appeals from professional disciplinary bodies:

> *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98
> *Al-Ghamdi v. College of Physicians and Surgeons of Alberta*, 2020 ABCA 71
> *Zuk v. Alberta Dental Association and College*, 2020 ABCA 162[13]

41. The Supreme Court recently declined leave to hear the appeal in *Zuk.* Of these four authorities, only one deals with the standard of review for an appeal from one administrative body to another within the same organization. That is *Yee*.[14]

42. In our view, the standard of review and guidelines for adjudicators in appeals under section 75 of the *Act* must follow those in *Yee*, decided after *Vavilov*. *Vavilov* dealt with appeals from an administrative body to an external body, the Courts. This is an internal appeal. That said, there is considerable overlap between the standards. As will be apparent from the discussion below, our decision would have been the same whether applying the standard of review in *Yee* or that in *Vavilov,* as also applied in the disciplinary appeals to the Court in *Al-Ghamdi* and *Zuk.*

43. The Court of Appeal considered that the Appeal Tribunal in *Yee* was sidetracked by a discussion on the application of *Dunsmuir*[15] in its analysis of the standard of review. The Court of Appeal noted that *Dunsmuir* was overturned by *Vavilov*, but went on to find the following at paragraph 32:

> …In any event, *Dunsmuir* was not the applicable authority. *Dunsmuir* dealt with the standard of review in external review of administrative action, that is, it dealt with the standard of review by a superior court of the decisions of an administrative tribunal. Different, although overlapping considerations apply to review at various internal levels within the administrative structure: *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399 at paras. 42-3, 57, 493 AR 89, 38 Alta LR (5th) 63. For example, on external review deference is extended by superior courts because the professional disciplinary tribunal is presumed to have heightened expertise and insight. There is no reason to presume that a professional internal appeal tribunal has less expertise than a discipline tribunal. [Emphasis in original]

44. The Court of Appeal then went on to consider the Appeal Tribunal's powers in the applicable legislation for Chartered Professional Accountants. That legislation provided that the appeal was based on the decision of first instance and the record plus any further evidence the Appeal Tribunal agreed to receive.

[13] Leave to appeal to SCC dismissed November 26, 2020: *Michael Yar Zuk v. Alberta Dental Association and College, et al*., 2020 CanLII 92504 (SCC).
[14] In another case, the Alberta Court of Appeal has granted leave to consider the standard of review for an internal appeal body in *Moffat v. Edmonton (Police Service)*, 2020 ABCA 80, but no decision has been published on CanLII at the time of this decision.
[15] *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

45. Section 75 of the *Act* is similar. This Appeal Panel is required to consider the hearing report, the hearing record, and representations made respecting the appeal.[16]

46. The Appeal Panel has no less expertise than the Committee; however, proper deference is still owed to the Committee Decision. The Court of Appeal noted in *Yee* that failure to provide proper deference would "undermine the integrity of the first level of the disciplinary structure, and make the proceedings before the discipline tribunal an ineffectual waystation along the path to a final decision."[17]

47. The Alberta Court of Appeal then set out the proper standard of review for appeals to an internal appeal body within a professional disciplinary context:[18]

> 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;

[16] The *Act* also allows the introduction of fresh evidence if certain conditions are met; no fresh evidence was tendered on this appeal.
[17] *Yee* paragraph 33.
[18] *Yee* paragraphs 34 and 35.

> (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.

48. The parties agree that the standard of review set out in *Yee* applies to this appeal.

49. Accordingly, respecting Citation 2, the question of whether intent is required for a finding of failure to be candid to an extent worthy of sanction must be reviewed for correctness.

50. The Committee's findings on whether the legal test was properly applied and whether Mr. Sharma, in fact, intended to lack candour in providing information to his new principal must be reviewed on a standard of reasonableness with significant deference to the Committee's findings.

51. Respecting sanction, administrative bodies are not bound by the same level of adherence to *stare decisis* as are the courts. However, the Appeal Panel should consider whether the imposed sanction falls outside the acceptable range of outcomes having regard to comparable decisions.[19] It is not sufficient that the Appeal Panel would have issued a different sanction. To overturn or vary sanction, the Appeal Panel must be convinced that the sanction was not fit or that the Committee applied the wrong principles on sanction. In other words, the sanction must be clearly unreasonable, manifestly excessive, or outside an acceptable range of outcomes in order to vary or overturn it.[20]

52. Mr. Sharma states, and we agree, that *Vavilov* provides additional guidance while recognizing that administrative tribunals are not bound by traditional *stare decisis,* citing the following:

> …where a decision maker *does* depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable.[21]

53. We turn now to the submissions of the parties.

[19] *R. v. Darnell*, 2014 ABCA 235 paragraph 11, as cited in the LSA's Lawyer Conduct Appeals Guideline June 11, 2016 (Guideline).
[20] Ibid. See also Guideline pages 4 and 5 and authorities cited therein including *R. v. Shrophsire* 1995 CanLII 47, (1995), 201 C.C.C. (3d) 193 SCC.
[21] *Vavilov* paragraph 131.

The Submissions of the Parties

Mr. Sharma's Submissions

54. Mr. Sharma did not appeal the finding of guilt on Citation 1. He admits he lacked candour in his dealings with the LSA. He misled the LSA when he misrepresented the amount of time he had articled. He said he worked three days per week instead of one day per week from September 16, 2016 to March 6, 2017.

55. Mr. Sharma appeals the finding on Citation 2. He disputes the finding of the Committee that he lacked candour with his new principal. In this regard, he states that intent is an inherent element of a citation for lack of candour. He states that the Record did not establish that he intended to lack candour in discussions with his new principal. Mr. Sharma states that the only relevant timeframe for consideration in this regard is March 6, 2017, the day Mr. Sharma met with his new principal when he was seeking employment after the termination of his Articles. That is the day that Mr. Sharma told his prospective new principal that he had only three to four months left in his Articles and that his Articles were terminated for his former principal's lack of workload and lack of workspace.

56. Mr. Sharma states that there is no evidence that he realized on March 6, 2017 that his previously modified articling arrangement was not adequate and, therefore, it was reasonable for him to believe he had only three to four months left in his Articles. In this regard, he points to the evidence on the Record that his former principal did not tell him that the September 2016 reduction in work schedule would extend his articling period. He further states that neither the education plan nor the Signed Articles of Clerkship stated anything other than 12 months.

57. Mr. Sharma further states that his subsequent admission, based on hindsight, that he should have informed his new principal of his status has no place in the determination of guilt at what he says is the only relevant time, March 2017.

58. Respecting his failure to share the performance challenges he experienced in articling, Mr. Sharma says that the workspace and workload shortage was his understanding of why his employment was terminated at the time and, therefore, he had no reason to say anything else. Mr. Sharma says he was "unshaken" in his evidence in this regard and that his employment was terminated without cause. He recognizes that his account of events differed significantly from that of his former principal. However, Mr. Sharma states the Record did not show the requisite intent for a finding of guilt. He argues that even the "wholesale acceptance" of his former principal's evidence over his cannot sustain this outcome.

59. Despite the appeal respecting the finding of guilt on Citation 2, the key focus of Mr. Sharma's appeal was on sanction. Mr. Sharma states the Committee erred in

determining that de-registration was an appropriate sanction for this conduct. Mr. Sharma states that the penalty imposed was not proportional to his conduct.

60. Citing the LSA Hearing Guide (the "Guide"), Mr. Sharma acknowledges that the factors in sanction include the need to maintain public confidence and ensure effective self-regulation. He also confirms that factors such as specific deterrence, general deterrence, denunciation, rehabilitation and parity are relevant. Mr. Sharma acknowledges that other considerations from the Guide include the nature of the conduct, the level of intent demonstrated, the impact or injuries caused, the number of incidents, the length of time over which they occurred, whether a breach of trust has occurred, and the presence of aggravating and mitigating circumstances.

61. Bearing these principles in mind, Mr. Sharma states that a full review of comparable authorities shows that there was no rational principled or reasonable basis to sanction him with an outcome that is, for a student, tantamount to disbarment.

62. In Mr. Sharma's written and oral submissions, multiple authorities were provided, both respecting students and lawyers, for what he alleges were more serious infractions that did not result in disbarment. In particular, Mr. Sharma referenced the decisions in *Terrigno*[22] and *Hammoud*[23] in addition *to Rigler, Cattermole,* and *Ihensekhien-Eraga*.

63. Mr. Sharma says that the sanction imposed, in comparison to other similarly-situated members, requires appellate intervention. He further states that he was entitled to expect that like cases would be treated alike. He submits that did not occur here.

64. Mr. Sharma also says the Committee erred in treating his own evidence as an aggravating factor, particularly without explanation as to why his principal's evidence was preferred.

65. Mr. Sharma says the Committee misapprehended and overemphasized certain factors including his admissions, whether he was remorseful, and whether he appreciated his duties to his regulator while failing to consider others. Mr. Sharma states that other relevant factors were overlooked, including the fact that he had intervening success with his new principal, was specifically deterred by his conduct, and largely admitted the first citation. He also says the Committee overlooked his genuine expression of remorse.

66. In considering all of the above arguments, alone or together, Mr. Sharma states that the sanction requires appellate consideration. He submits that the order of de-registration should be varied to a reprimand or suspension, with or without a related educational plan.

[22] *Law Society of Alberta v. Terrigno*, 2010 ABLS 6.
[23] *Law Society of Alberta v. Hammoud*, 2014 ABLS 30.

LSA Submissions

67. The LSA submitted that both determinations under appeal were appropriate and reasonable and that Mr. Sharma's appeal should be dismissed with costs.

68. Respecting Citation 2, the LSA states that Mr. Sharma omitted relevant facts in not telling his new principal that he had been articling part-time, made an incorrect positive statement in telling him that he had only three or four months to go in his Articles, and coloured the facts in telling him inaccurate reasons for the termination of his Articles.

69. The LSA states that it is inescapable that Mr. Sharma knew his statements were inaccurate and misleading. The LSA states that the mental element of willful blindness is sufficient to make out intent and, further, that Mr. Sharma indisputably misrepresented the duration of his Articles completed and remaining.[24]

70. Respecting sanction, the LSA states that the Committee did not depart from the principles of sanction and that, instead, it was Mr. Sharma's conduct, approach to the hearing, and lack of appropriate remorse that properly grounded his de-registration sanction.

71. The LSA further states that Mr. Sharma continued to wrongly characterize his conduct as a "mistake" rather than a failing. A lack of integrity, the LSA states, is altogether different. Here, the Committee was concerned that the lack of integrity went to the root of Mr. Sharma's governability by his regulator.

72. In addition to noting the lack of mitigating factors that were present in *Cattermole* and *Ihensekhien-Eraga,* the LSA further referenced *Hammoud.*[25] Mr. Hammoud's law school studies were interrupted for a criminal conviction for assault on a professor. Then his articles were interrupted twice, once when he withdrew his application, and another time when he was suspended from CPLED after a verbal altercation with CPLED staff. This meant Mr. Hammoud had to find a new principal, but he said nothing of his disciplinary record to his new employer nor was he candid with the LSA about his assault conviction. During the LSA's investigation, Mr. Hammoud walked out on the investigators in an interview. He twice withdrew consent for investigators to contact third parties. He showed no remorse.

[24] The LSA states, respecting the period of Articles remaining, that it was not possible that Mr. Sharma had only three or four months left on his Articles even if he did not appreciate that the part-time work arrangement extended his Articles. The LSA states this because it omits the period of time where Mr. Sharma was in India. However, the Record shows that Mr. Sharma was required to work extra time before he left for India to make up the time missed [Hearing Transcript page 12, lines 9-20]. As such, if Mr. Sharma received full credit for his Articles from July 26, 2016 to March 6, 2017, he would have had four months and twenty days left on his Articles, which fact was apparent from the Assignment signed by his new principal on March 7, 2017. It is difficult to conceive that a Hearing Committee would find that this alone, absent the other factors in this case, would be conduct rising to a level deserving of sanction. However, this was not the only concerning aspect of Mr. Sharma's conduct.

[25] *Law Society of Alberta v. Hammoud*, 2014 ABLS 30 dismissing the appeal from the Hearing Committee decision 2013 ABLS 9.

73. Further, like Mr. Sharma, Mr. Hammoud had argued for a mere reprimand at sanction. The LSA states that, as in *Hammoud,* this submission is "tantamount to thumbing one's nose at the entire disciplinary endeavor."[26]

74. The LSA states there was no evidence of hardship or difficulty for Mr. Sharma. The mitigating factors present in other cases are not present here. Indeed, Mr. Sharma continued to contest his guilt on Citation 2 through to this appeal.

75. The LSA agrees with Mr. Sharma's submission and the binding authority in *Vavilov* that, where an administrative decision maker departs from longstanding internal authority, it bears the justificatory burden in explaining that departure. However, the LSA states there was no such departure. Even though the sanction was admittedly extreme, it was reasonable and justified for the reasons stated by the Committee. As such, the sanction should stand.

Analysis and Decision

76. After reviewing the Decision and the Record, and considering the representations of the LSA and Mr. Sharma, for the reasons set out below, the Appeal Panel confirms the Committee's finding of guilt on Citation 2. We dismiss the appeal on Citation 2. The Appeal Panel allows the appeal on sanction and directs that Mr. Sharma's de-registration as an articling student be varied to a suspension of one year plus a day from the date of the hearing January 7, 2020. The suspension will come to an end on January 8, 2021, subject to reinstatement requirements.

77. Based on the principles of the standard of review, this analysis begins with the purpose of the disciplinary provisions of the *Act*. The *Act* ensures standards of professionalism and competence within the legal profession. Justice Fruman noted this purpose in *Singh v. Law Society of Alberta*[27]*:*

> This legislation is directed toward the establishment and maintenance of professional standards, and the protection of clients from those who fail to meet or maintain those standards.

78. Likewise, the Alberta Court of Appeal in *Al Ghamdi* set out the purpose of self-regulating professional disciplinary bodies. There, a doctor's conduct was in issue. Here, it is a student-at-law, but the principles are the same:

> The members of the College of Physicians and Surgeons of Alberta, like most professions in Alberta, are afforded the privilege and responsibility of self-regulation. The ultimate objective of professional regulation is protection of the public. The presumption behind self-regulation is that no one has a greater stake

[26] *Ibid*, Hearing Committee Report.
[27] 2000 ABCA 260 at paragraph 23.

> in the integrity of the profession than the members of the profession, and the profession is well-positioned to judge when conduct is so unacceptable as to amount to professional misconduct that is contrary to the public interest. On the other hand, professionals subjected to discipline are entitled to have disciplinary decisions reviewed externally on appeal to this Court.[28]

79. Articling requirements under the *Act* are set out at sections 37 through 40 and include a required period of articling, which period is subject to the Rules. Articling is a period of mentorship and training under an approved principal for those who already possess a recognized university degree in law or have received NCA Certification. Together with an independently run legal education course, the articling period is designed to ensure that a student-at-law will have, on successful completion, the necessary entry-level competence and professionalism to become a practicing lawyer and member of the LSA.

80. An articling student's conduct comes within the mandate of the *Act*. Any member's conduct, which member may be a student-at-law,[29] that is incompatible with the best interests of the public or the members of the LSA or tends to harm the standing of the legal profession generally is conduct deserving of sanction.

81. Mr. Sharma's Hearing proceeded under section 72 of the *Act*. Section 72 of the *Act* addresses conduct.[30] The Committee, after finding conduct deserving of sanction, had the following options for sanction:

(a) order that Mr. Sharma's registration as a student-at-law be cancelled (a sanction tantamount to a disbarment for a lawyer); or

(b) order that Mr. Sharma's registration as a student-at-law be suspended for a period prescribed by the order; or

(c) order that Mr. Sharma be reprimanded.[31]

82. The Committee ordered de-registration of Mr. Sharma, the harshest sanction available under the *Act*. This order is tantamount to a disbarment.

83. Section 75 of the *Act* provides a statutory right of appeal to Mr. Sharma respecting the Decision under section 72. This right of appeal requires a panel of Benchers to convene in order to:

(a) consider the hearing report and the hearing record, and

[28] 2020 ABCA 71 at paragraph 10. The Appeal procedure in that case was to the Court of Appeal; here, the first level of appeal is this Appeal Panel.
[29] For the purposes of the *Act* at section 49(5), reference to a member includes a student-at-law. Further, section 49(5)(b) provides that references to the disbarment of a member shall, in relation to a student-at-law, be read as references to the termination of the registration of the student-at-law.
[30] The LSA did not proceed under the part of the *Act* that addresses competency.
[31] As per section 72(1) of the *Act.* In addition, the Committee could have ordered a fine, conditions on suspension, and costs under Section 72(2) of the *Act.*

(b) hear any representations of the member or the member's counsel respecting the appeal.

84. After the appeal hearing, the Appeal Panel may issue an order confirming the Committee's finding of guilt in respect of the member's conduct or an order quashing the finding of guilt.

85. Where the Appeal Panel confirms the finding of guilt, the Appeal Panel may make an order confirming or varying the order under section 72 (here, the ordered de-registration) or replacing it with any other order that the Committee could have made under that section.

Appeal Respecting Citation 2: Lack of Candour with Mr. Sharma's New Principal

86. The *Act* and Rules required Mr. Sharma to Article for a period of 12 months.[32] The applicable Rules allowed students-at-law to complete the term of Articles over a period of up to two years. The Rules do not specify that the term of the Articles must be performed on a full-time basis.

87. Neither the education plan nor the Signed Articles of Clerkship specify a requirement of full-time work. Articles of clerkship can take an extended period; as a result, the fact of part-time work alone is not objectionable. Working on a reduced schedule during articling is one thing. Working one day per week for most of one's articles is something completely different.

88. Mr. Sharma has argued that his conduct is no worse than the conduct of another student, which conduct was found blameless on appeal. In that regard, Mr. Sharma referred the Appeal Panel to another appeal panel decision, *Terrigno*.

89. In *Terrigno,* an articling student procured an article with a lawyer (GZ) who was later found to be unsuitable as a principal. By November of his articling year, Mr. Terrigno found himself without an article. This would otherwise prejudice Mr. Terrigno's ability to commence his CPLED course on a timely basis in January and, in turn, delay his call to the bar. GZ, Mr. Terrigno and another lawyer (AS) met and signed an assignment of articles to AS dated November 17, 2006. In fact, Mr. Terrigno did not commence articles with AS on November 17, 2006. Mr. Terrigno continued working for GZ knowing that he was an unauthorized principal. Terrigno met only once with AS before his CPLED course commenced in mid-January 2007. AS paid Terrigno nothing and had no set hours of work for him.

[32] The period was subsequently shorted to 8 months, which Rule was amended by the Benchers given the circumstances of the Covid-19 pandemic. There are also other time frames for court students, but for the purposes of this matter, the required period was 12 months.

90. Mr. Terrigno was found guilty of misleading the LSA respecting his articles by a Hearing Committee. Mr. Terrigno was given a suspension of two months by the Hearing Committee in that matter.[33] The Hearing Committee found that the LSA had made out deceit[34] on the evidence and that Mr. Terrigno actively misled the LSA respecting the articling arrangement. However, the Hearing Committee did not find that the Article was a complete sham; rather, it found the articles to be inappropriate. The Appeal Panel considered this inconsistency in the evidence and overturned the Hearing Committee decision on guilt. The Appeal Panel found that the evidence could not reasonably support a finding that Mr. Terrigno's conduct was deceitful. The test was not whether the LSA was misled, but whether Mr. Terrigno intended to mislead. The new principal had consented to his absence. Mr. Terrigno was still performing some legal services and he was available to the new principal if needed. The articling arrangement was sloppy, but it was not a sham. As such, based on the evidence it was not open to the Hearing Committee to find that Mr. Terrigno intended to deceive the LSA when submitting his assignment of articles.[35]

91. Mr. Sharma argues this precedent as authority for his appeal on Citation 2. The Appeal Panel does not agree.

92. The Appeal Panel finds that the Committee had ample evidence, including the admissions of Mr. Sharma in the Admitted Facts and the Hearing itself, on which to base its findings of lack of candour necessary to ground the finding of conduct deserving of sanction for Citation 2.

93. Regardless of the ambiguity in the time commitment for the articling period in the Rules, no reasonable student or principal could consider that working one day per week would satisfy the requirements of the LSA to ensure entry level competence or gain admission to the bar. Any other interpretation would be inconsistent with the objectives of the *Act* and the Rules, both of which are designed to ensure that the public can be assured that articled students who are admitted to the profession have entry level competence.

94. Even if Mr. Sharma believed that his Articles to that point would receive full credit, he clearly misled his new principal about the extent of his experience and the significant performance issues he had during his Articles. Articling one day per week instead of five days per week was a highly salient fact of Mr. Sharma's past experience. We agree with the Committee that it should have been disclosed. The Committee was entitled to find, particularly after hearing Mr. Sharma's evidence, that he made a choice in not disclosing

[33] The sanction for the conduct will be referenced *infra*. The Appeal Panel in *Terrigno* stated: "The Hearing Committee (HC) found that the relationship of principal and student was not created and acted upon from November 17, 2006 to January 15, 2007. Therefore, Mr. Terrigno had misled or attempted to mislead the LSA. Accordingly, the HC found him guilty of the citation on June 18, 2008. A two-month suspension, a reprimand, and the payment of costs of the Hearing were ordered. Mr. Terrigno appeals the HC's written decision issued on June 26, 2008."

[34] We pause to note the Hearing Committee in *Terrigno* used a "higher standard" for the finding of deceit at the time based on the *Ringrose* line of authorities. This is now only one standard for findings of fact, whether involving deceit or not: the balance of probabilities: *H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53 at para 40 (per Rothstein J).

[35] Two Appeal Panel members dissented finding that there was sufficient evidence for the finding of guilt by the Hearing Committee.

it. The choice was made to misrepresent the facts to procure an articling position rather than face the prospect of being without an articling position.

95. Further, respecting the reasons for his dismissal, when a principal takes out the *Code of Conduct* and walks a student through the competence excerpts of the *Code*, repeatedly expressing serious concerns on performance as Mr. Sharma's former principal did, it is misleading for a student to entirely omit those concerns to a prospective new principal. Instead, Mr. Sharma suggested office space and light workload were the reason for the dismissal. The Committee was entitled to find Mr. Sharma lacked the expected candour that should have occurred in this exchange.

96. We expressly reject Mr. Sharma's appeal argument that intent was not proven on Citation 2.[36] Mr. Sharma states that the LSA failed to establish that he was "knowingly lacking in candour." Mr. Sharma states that the evidence supports that he merely made a mistake with his new principal in misrepresenting the time articled and the reasons for his dismissal. The Committee found that Mr. Sharma's statements were not true or candid and, further, that he coloured the facts "in the hope of gaining and advantage" to procure employment to conclude his Articles. This contemplates an awareness of his prior limited experience and reasons for his dismissal together with a choice to conceal them. As was the case in accepting the principal's evidence over Mr. Sharma's, the Committee was entitled to make this finding on the evidence.

97. The Committee in paragraphs 21 through 23 of the Decision made a finding of both misrepresentation and lack of candour. Respecting Mr. Sharma's impugned statements to his prospective principal, the Committee found the following:

> These statements were neither truthful or candid. … Candour is the quality of being forthcoming. Omitting or modifying salient information in situations where the reasonable person would expect that it would be disclosed demonstrates a lack of candour.

98. The Committee went on to compare a student's obligations to his prospective principal to that of a lawyer's obligation of candour to a client: "A student at law must be honest and candid and must inform his or her principal of all information known to the student that may affect the interest of the principal." Mr. Sharma's limited experience and the serious competency concern of his principal was important information for the new principal. The Committee found that Mr. Sharma coloured the facts in the hope of gaining an advantage, namely a job opportunity.

99. Given the above, the Appeal Panel need not determine the legal question of whether intent is a requisite element of lack of candour for the purposes of this appeal because the Committee found that Mr. Sharma's conduct was intentional. However, we observe

[36] Mr. Sharma cites *Law Society of Alberta v. Mirasty* (Hearing Committee, 2016) and *Law Society of Alberta v. Juneja*, 2014 ABLS 33 paragraphs 211-215 for the legal consideration of the intent required.

that members of the LSA also have an obligation where a material misrepresentation is made inadvertently to correct that misrepresentation once the true facts become known. Even if Mr. Sharma's representation that he had only three to four months left on his Articles was an inadvertent misrepresentation in March 2017, it was clear to Mr. Sharma by the end of June 2017 that he had misrepresented his part-time status such that it would significantly extend his Articles. That was important information to share with his new principal. Nevertheless, Mr. Sharma admitted at paragraph 25 of the Admitted Facts that his new principal knew nothing of this past part-time work until September 2017. Accordingly, the Record shows that the concerning lack of candour was ongoing even after the LSA's direct email to Mr. Sharma in June 2017 and his reply in July 2017.

100. Accordingly, the Appeal Panel affirms the finding of guilt on Citation 2.

101. We do, however, find that the Decision respecting sanction is, in light of comparable authorities, excessive and not reasonably sustainable. The sanction falls outside the acceptable range and we hereby vary the sanction to a suspension of one year plus a day for the reasons that follow.

Appeal Respecting Sanction

102. Administrative tribunals do not follow the same standards as do the courts in following precedent. *Stare decisis* does not play the same role here as it does in our courts. Nevertheless, in our view, fairness requires that similar misconduct should generally attract similar sanction.

103. We agree with the LSA's submission that the most serious misconduct was the misrepresentation to the LSA of Mr. Sharma's past work as an articling student of three days per week instead of one day per week.

104. Based on the Record, and based on the appeal hearing and submissions, there has not been a single case of de-registration of an articling student for a lack of candour where the impugned statement or misrepresentation does not relate to underlying criminal, quasi-criminal, or other disciplinary conduct.[37] The Appeal Panel asked both counsel if such a case existed. None was identified.

105. Indeed, even at the Hearing, LSA Counsel acknowledged it was "difficult…frankly speaking, really frankly, to argue for a de-registration." There were cases of much more serious conduct which did not lead to de-registration.

106. On appeal, Mr. Sharma extended that argument, citing other disciplinary matters in Alberta where lawyers who had failed to be candid with the LSA about conduct, including

[37] *Zimmerman* and *Hammoud* were the only authorities tendered where the sanction imposed was de-registration of an articling student. The underlying facts of each matter are summarized in these reasons at paragraphs 32 and 72, respectively.

swearing a false declaration, altered documents, or improper use of a trust account were not disbarred.

107. Mr. Sharma failed in his performance as an articling student with his first principal. That is clear from the Record. However, these are not competency proceedings. These are conduct proceedings. In comparing Mr. Sharma's circumstances with those in other cases of lack of candour leading to sanction, we note that Mr. Sharma lacked candour about his experience as a student. He was not covering up plagiarism, fraud, theft, forgery or any crime. He was not misleading anyone about past misconduct. We note that Mr. Sharma's original articling arrangement was not a sham despite it being reduced to hours that could not have led to Mr. Sharma's bar admission under the Rules at that rate of work.

108. The circumstances that gave rise to Mr. Sharma's part-time status as a student-at-law were imposed on him. The Record shows that this created difficulties and hardship for him that were clearly a factor in his conduct with his new principal in March 2017 and the LSA in July 2017. That is not at all to say that it was the proximate cause of the failure in his duty of candour, but it was a factor in it.

109. The evidence on the Record shows that, in less than 48 hours, Mr. Sharma went from having a secure articling position to having his Articles terminated, to interviewing for a new position, to signing the Assignment. Mr. Sharma's evidence was that he was shocked and alarmed at his predicament. There is no evidence to the contrary on this point. Indeed, the only reasonable conclusion to make, for any articling student in such a circumstance, is that it would be, objectively, a very difficult situation. Without excusing the conduct itself, this was a hardship for Mr. Sharma. In that regard, we feel that there was a reviewable error made by the Committee in finding that there was no evidence of hardship. Objectively, this situation would be a hardship for any articling student.

110. Further, the uncontroverted evidence from both Mr. Sharma and his former principal is that Mr. Sharma's former principal did not tell him, in September 2016 or at any other time, about the impact of the reduction of his hours from full-time to part-time status. Mr. Sharma's principal's conduct is not before us, but it would be wrong to ignore this evidence. As in *Terrigno*, we find Mr. Sharma should have been able to rely on his principal to assist him in determining that articling required a full-time commitment, or at least hours that would meet LSA requirements in order to meet the expected standards of the LSA.

111. We are further mindful, as was the Appeal Panel in *Terrigno*, that the principal-student relationship is a two-way street. Mr. Sharma's principal did not tell him anything about the impact of his part-time employment agreement when he executed his new employment agreement in September 2016. In fact, this change had a major impact on his Articles. Working one day per week, practically speaking, meant that Mr. Sharma could not have finished his term of Articles in the time allowed by the LSA.

112. In varying the sanction, we are mindful that the conduct that gave rise to these proceedings occurred in 2017 and that Mr. Sharma continued working for his new principal, apparently without issue, through to the time of the Hearing in October 2019. The effect of Mr. Sharma's suspension is that his entry to the bar, which is still subject to a reinstatement application and LSA process, will be delayed not just by months, but by a period of at least two years.

113. We do not release Mr. Sharma from his obligation to ensure his own proper qualifications, but we cannot overlook this context. Therefore, we cannot agree with the Committee that there was no evidence of mitigation or that there was not "any" evidence to explain Mr. Sharma's conduct.

114. The background and context of Mr. Sharma's conduct should, at minimum, have been considered as potential mitigation by the Committee. Again, this does not displace Mr. Sharma's own obligations to ensure that he met all necessary obligations of his Articles. However, it does, on this evidence, bear directly on the question of appropriate sanction. In reviewing the Committee's reasons, together with comparable authorities, we find the sanction excessive such that it requires intervention on appeal.

115. We are mindful that the misrepresentation to the LSA occurred many months after Mr. Sharma lost his first articling position. We are further mindful that Mr. Sharma took weeks to respond to the LSA before he misrepresented in July 2017 the time that he had worked. Nevertheless, the struggles that Mr. Sharma had in maintaining and finding articles were serious and would be difficult for anyone in his position.

116. The Committee focused on the fact that there was no other evidence of good character adduced by Mr. Sharma. In our view, the Committee should have also considered that, unlike other cases where an articling student was de-registered, in this case, there was no underlying misconduct or illegal behaviour before Mr. Sharma lacked candour with the LSA and his new principal.

117. Prior to misleading the LSA and his new principal, Mr. Sharma found himself in difficult circumstances that had nothing to do with a lack of ethics or lack of candour. Mr. Sharma was not sanctioned for competency concerns. That may be an issue for Mr. Sharma another day and is beyond the scope of the Appeal Panel. The issue here was his conduct. The key difference between this case and the others cited where an articling student was de-registered is the absence of underlying improper conduct that preceded and motivated the misleading statements.

118. The LSA regularly addresses lawyers who fail to be candid. These cases do not invariably lead to a disbarment in the absence of significant evidence of mitigation. That is not to say that disbarment (or de-registration for a student-at-law) cannot occur for a failure to be candid. Whatever the standard for mitigation, the primary focus of sanction

must first address the conduct itself. Here, the penalty was excessive for the conduct itself regardless of mitigating and aggravating factors.

119. In the event the appeal on sanction was successful, both parties invited the Appeal Panel to vary the sanction rather than remit the sanction back to the Committee. Here, we view Mr. Sharma's conduct to be much less severe than the conduct in *Ihensekhien-Eraga* and more analogous to the conduct in *Terrigno* and *Cattermole.* Unlike *Terrigno,* Mr. Sharma's conduct was intentional. Unlike *Cattermole,* the mitigating factors here were not comparable to Ms. Cattermole's unfortunate circumstances. That said, the underlying conduct which is the subject of lack of candour (part-time work and performance challenges) is not plagiarism, let alone criminal or other disciplinary conduct. There is no accompanying collateral misconduct.

120. Mr. Sharma argued that the Committee misapprehended the sincerity of his apology.[38] The Committee heard that evidence first-hand and was in the best position to judge whether it was meaningful and sincere. That said, the apology was not entirely absent.[39] Mr. Sharma also made multiple admissions in the Admitted Facts which, though not leading to a guilty plea prior to hearing, did save considerable time at hearing.

121. In our view, having regard to the evidence, the lack of appropriate remorse, the conduct itself, and the importance of ensuring that articling students do not attempt to shortcut their articling requirements, we hereby vary the sanction in this matter to a suspension of one year plus a day to be served from the date of the Decision, January 7, 2020.

122. We conclude with the cautionary reminder that the effect of Mr. Sharma's efforts to bypass two or three months of his Articles will delay the conclusion of Mr. Sharma's articling term by at least two years.

Concluding Matters

123. In light of the divided success on Appeal, the Appeal Panel orders that each party bear its own costs of the Appeal. The costs order of the Committee stands.

124. Finally, we are grateful for the excellent and thorough submissions of Counsel.

[38] We also note that Mr. Sharma's counsel at the Hearing made submissions on sanction that Mr. Sharma was more contrite than what was conveyed at the Hearing; however, we do not disturb the Committee's findings that it was not appropriately sincere.

[39] As summarized in paragraph 19 of Mr. Sharma's factum referencing pp. 105[122]/20 – 106[123]/15 of the hearing transcript, Mr. Sharma stated this respecting his false email to the LSA at the hearing: "I really apologize for that. That is my mistake. I did it, I committed it, it's a blunder on my part. But I know that I had to keep my integrity to this thing, I should have not done it. I'm really sorry for that. […] It's not good for a lawyer or would-be lawyer to – because in society, in Law Society also, in the profession with other lawyers, it's not good for me. […] It's not good because the trust conditions are put with the faith on that, so I should not have done it. I'm really apology [sic] for that. [Q What about trust conditions?] Because the other lawyers are depending upon your words, whatever you say, they trust you. So they should not have that with me."

125. 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 to the extent that redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated at Edmonton, Alberta, January 14, 2021.

Kathleen Ryan, QC

Bill Hendsbee, QC

Cal Johnson, QC

Linda Long, QC

Barbara McKinley

Darlene Scott, QC

Cora Voyageur

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