

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

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF IVIE IHENSEKHIEN-ERAGA
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Louise Wasylenko – Chair
Ronald Sorokin – Bencher
Edith Kloberdanz – Adjudicator

Appearances

Karen Hansen and Miriam Staav – Counsel for the Law Society of Alberta (LSA)
Ivie Ihensekhien-Eraga – Self-represented

Hearing Date

March 10, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION PHASE

Overview

1. Ivie Ihensekhien-Eraga is a student-at-law in Alberta. She practiced law in Nigeria from 1995 to September 2013. Ms. Eraga immigrated to Canada with her family, primarily because of their need to find medical treatment. In April 2017 Ms. Eraga received her NCA designation and began the process of accreditation as a lawyer in Alberta. In May 2017, having begun the articling process, she applied to the LSA to abbreviate her term of articles.
2. On May 10, 2019 Ms. Eraga was found guilty of failing to be candid with the LSA on six occasions between November 16, 2017 and February 2, 2018, regarding a factum submitted in support of her application to abbreviate her articling term. As a result, Ms. Eraga's registration was ordered to be suspended for a period of 12 months, beginning June 25, 2019¹.

¹ *Law Society of Alberta v. Ihensekhien-Eraga*, 2019 ABLs 16.

3. On April 17, 2019 police responded to an incident at Ms. Eraga's home. On November 4, 2019 Ms. Eraga was charged with public mischief related to the April 17, 2019 incident.
4. On January 14, 2020 Ms. Eraga submitted an application for reinstatement to the LSA following the suspension (Reinstatement Application). On review of the Reinstatement Application the LSA noted it was incomplete and potentially inaccurate, therefore requested additional information and clarification of Ms. Eraga. This led the LSA to investigate Ms. Eraga's conduct related to the April 17, 2019 incident and the public mischief charge. The investigation continued until October 25, 2021.
5. On March 25, 2020 criminal proceedings regarding the public mischief charge were stayed (filed in court April 6, 2020). On September 22, 2020 Ms. Eraga reported her criminal charge to the LSA.
6. A hearing into the conduct of Ms. Eraga took place from August 29 to September 2, 2022 (Merits Hearing), and for the reasons set out in its decision dated December 23, 2022² (Merits Decision), this Hearing Committee (Committee) found Ms. Eraga guilty of conduct deserving of sanction in relation to the following five citations:
 - 1) It is alleged that Ivie Ihensekhien-Eraga failed to report or disclose to the Law Society her criminal charge and that such conduct is deserving of sanction;
 - 2) It is alleged that Ivie Ihensekhien-Eraga created a false eyewitness statement and provided such false statement to the police in the course of a criminal investigation and that such conduct is deserving of sanction;
 - 3) It is alleged that Ivie Ihensekhien-Eraga provided false photo evidence in response to a Law Society investigation and that such conduct is deserving of sanction;
 - 4) It is alleged that Ivie Ihensekhien-Eraga failed to be candid with the Law Society and that such conduct is deserving of sanction; and
 - 5) It is alleged that Ivie Ihensekhien-Eraga breached an undertaking to the Law Society to preserve electronic data on her cell phone and that such conduct is deserving of sanction.
7. Ms. Eraga was represented by counsel at the Merits Hearing. At the hearing on sanction on March 10, 2023, she was self-represented.
8. After reviewing all of the evidence and exhibits, hearing the testimony and arguments of the LSA and Ms. Eraga, and considering the facts of this case, for the reasons set out below the Committee finds that the appropriate sanction is disbarment. In accordance

² *Law Society of Alberta v. Ihensekhien-Eraga*, 2022 ABLs 26 (Merits Decision).

with section 72 of the *Legal Profession Act (Act)*, the Committee orders that Ms. Eraga be disbarred, which, pursuant to section 49(5)(b) of the *Act* results in the termination of Ms. Eraga's registration as a student-at-law.

9. In addition, pursuant to section 72(2)(c) of the *Act*, the Committee orders that Ms. Eraga pay costs in the amount of \$110,455.84. The costs are payable within two years of the issuance of this written decision.

Preliminary Matters

10. As noted in the Merits Decision, there were no objections to the constitution of the Committee, or its jurisdiction. No objections or private hearing applications were made during the sanction phase of the hearing, so the hearing continued before this Committee in public.

11. The Committee received comprehensive submissions including legal authorities from both parties. The following were marked as exhibits, by consent, at the hearing:

- 1) Exhibit 31 – Certificate of the LSA, dated February 8, 2023, confirming Ms. Eraga's disciplinary record.
- 2) Exhibit 32 – A Statement of the Estimated Costs of the Merits Hearing (Costs).
- 3) Exhibit 33 – Letters from:
 - (i) Dr. [J.M.], October 29, 2021, oncologist
 - (ii) [K.M.], February 23, 2023, psychologist
- 4) Exhibit 34 – 12 letters of reference from friends and former professional colleagues.

12. The facts related to the sanctionable conduct are set out in the Merits Decision. This phase of the hearing is to consider the appropriate sanction for that conduct.

Sanction Principles

13. Both the LSA and Ms. Eraga agreed regarding the principles of sanction following a finding of guilt of conduct deserving of sanction.
14. LSA counsel summarized the principles related to sanction. LSA counsel referred to the following passages in the LSA Pre-Hearing and Hearing Guideline, June 2022 version (Guideline), which state:

185. The fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.

186. Other purposes of sanctioning include:

- a. Specific deterrence of the lawyer;
- b. Where appropriate to protect the public, preventing the lawyer from practicing law through disbarment or suspension;
- c. General deterrence of other lawyers;
- d. Ensuring the Law Society can effectively govern its members; and
- e. Denunciation of the misconduct.

187. Sanctioning must be purposeful. The factors that relate most closely to the fundamental purposes outlined above carry more weight than others.

15. Section 72(1) of the *Act* requires a hearing committee, on finding a member guilty of conduct deserving of sanction, to disbar, suspend or reprimand the member. The type of sanction must be determined with reference to the purposes of sanctioning.
16. The submissions of the LSA and Ms. Eraga respecting sanction are reflected below.

Submissions on Sanction - LSA

17. The LSA seeks the termination of Ms. Eraga's registration as well as costs. LSA counsel submits that Ms. Eraga's conduct reflects a lack of integrity and ungovernability so egregious as to merit the sanction of disbarment.
18. The LSA first provided Ms. Eraga notice that LSA would be seeking a sanction of deregistration by a letter to Ms. Eraga on November 17, 2021.
19. LSA counsel directed the Committee to section 49 of the *Act* which refers to conduct, "...whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta", and that "...this Part and the rules under this Part apply to students-at-law..." (section 49(4)), and further that references to the disbarment or suspension of a member shall, in relation to a student-at-law, be read as references to the termination or suspension, respectively, of the registration of the student-at-law (sections 49(5)(b) and (c)).

20. LSA counsel submits that Ms. Eraga's conduct demonstrated a blatant and extreme lack of integrity. She created a false eyewitness statement and provided such false statement to the police in the course of a criminal investigation (Citation 2) which demonstrates her disregard for the law. Her provision of false photo evidence (Citation 3) in response to an LSA investigation was dishonest and deceitful.
21. LSA counsel submits that Ms. Eraga's failure to be candid with the LSA (Citation 4) represents conduct that would reasonably tend to harm the standing or reputation of the legal profession, as noted by the Committee at paragraph 137 of the Merits Decision.
22. LSA Counsel referred to the following paragraphs of the Guideline as factors for consideration in determining the appropriate sanction:
 200. The ability of the Law Society to govern the profession is essential to self-governance.
...
 201. Integrity is the most important attribute of any lawyer. Lawyers must discharge all duties owed to clients, the court, other members of the profession and the public with integrity. Integrity on the part of lawyers is essential to the effective operation of the legal system and the regulation of the legal profession.
 202. Dishonourable conduct by a lawyer in either professional practice or private life reflects adversely on the public's perception of the integrity of the profession and the administration of justice. If the conduct would bring the public's perception of the legal profession into disrepute, impair a client's trust in the lawyer or otherwise bring into question the lawyer's integrity, the Law Society may take disciplinary action.
 203. Lawyers who by their conduct have proven to be lacking in integrity may lose their right to practise law. The professional obligation to act with integrity is violated by the following types of serious misconduct:
...
 - b. intentional interference with the administration of justice;
 - ...
 - f. any misconduct involving dishonesty or deceit.
23. Ms. Eraga has been found guilty of failing to be candid (Citation 4) and breaching an undertaking (Citation 5), which the Guideline specifies as the type of misconduct that could reasonably undermine the Law Society's regulatory function and must be strongly denounced. Further, LSA counsel submits that this conduct, as well as Ms. Eraga's

failure to report or disclose to the LSA her criminal charge (Citation 1), were all deliberate and evasive actions that interfered with the LSA's mandate to govern the profession.

24. LSA counsel entered Ms. Eraga's student record (Exhibit 31) which confirms she had been disciplined in June of 2019 for failure to be candid with the LSA (on 6 occasions over a period of 12 months). In the hearing committee's decision on that matter, it was noted, "... we find Mrs. Eraga's verbal apology at the hearing of this matter to be a consideration in her favour. ... this apology leaves us with some hope that Mrs. Eraga may be able to learn from her mistakes and avoid the commission of such misconduct in the future."³ LSA counsel submits that matters unfolded differently. In November of 2019 Ms. Eraga was charged with Public Mischief for intentionally misleading a police officer by creating a false eyewitness statement.
25. LSA counsel submits that Ms. Eraga's lack of candour continued over an extended period of time, from submission of her Reinstatement Application in January 2020 and throughout the LSA's investigation from the fall of 2020 to October 2021.
26. Ms. Eraga is 49 years old and practiced law in Nigeria for at least 15 years. Since her arrival in Canada, she has obtained the NCA designation, completed the CPLED program and articles. LSA counsel submits that, given her experience, Ms. Eraga ought to have known that her conduct is deserving of sanction.
27. LSA counsel cites multiple authorities in support of its submission for de-registration (disbarment), which are summarized in the following paragraphs.
28. In *Law Society of Alberta v. Hammoud*, 2013 ABLS 9 the student-at-law was found guilty of bringing discredit to the profession through his conduct toward CPLED staff, his principal and a police constable; of failing to be candid with the LSA in his application to become a student-at-law and of failing to be candid with the LSA investigators; of failing to be candid with another lawyer and of failing to comply with Rule 105 of the LSA. LSA counsel highlighted the importance of integrity and governability underlying the decision. The member's registration with the LSA was terminated and full costs were ordered.
29. In *Power (Re)*, 2009 LSBC 23, the lawyer was found guilty of failing to disclose the use of other surnames and failing to provide particulars of previous criminal charges on his application for enrolment in the Law Society of British Columbia (LSBC), which he solemnly declared was "true, accurate and complete" when he knew it was not. He was also found to have made untrue statements to LSBC staff and investigators which he knew were not true when he made them. The decision was based on the importance of a lawyer's integrity and that dishonesty in connection with an application for admission as a member of the profession is a serious matter. It also stressed that a lawyer must act

³ Merits Decision at paragraph 37.

with the utmost good faith with respect to its regulator. The member was disbarred and ordered to pay costs.

30. In *Law Society of Alberta v. Virk*, 2020 ABLs 4, aff'd 2021 ABLs 16, aff'd 2022 ABCA 2 the lawyer was found guilty on 15 of 19 citations which included lack of integrity, ungovernability and failure to serve. Virk's false statements, which occurred "...over a protracted period of time...violate the core of what is expected of a lawyer." Virk's counsel suggested that the LSA has a duty to accommodate Virk's mental health condition. That hearing committee found no "...causal or contributory connection between Virk's mental disorder and any of his misconduct, particularly the more serious aspects such as the integrity-related breaches and ungovernability." The hearing committee concluded that the protection of the LSA, the public and the profession could only be achieved by disbarment of the member. The member was disbarred, and costs were ordered.

Submissions on Sanction – Ms. Eraga

31. Ms. Eraga submits that a reprimand would be sufficient sanction. Alternatively, a suspension and conditions could achieve the goals of sanctioning.
32. Ms. Eraga submits that section 49(1) of the *Act* relates to conduct arising from incompetence and that sanctions pursuant to section 72(1) of the *Act* may only be imposed if the LSA can prove incompetence.
33. Ms. Eraga does not accept the Committee's findings of guilt in this matter and continues to argue that the citations against her are unjustified. She denies having breached an undertaking.
34. Ms. Eraga submits that the references to the *Act* and the Code of Conduct (Code) in these proceedings do not apply to her because she was not a lawyer. She maintains that, as a suspended student-at-law, she has no obligations. She notes that Chapter 1 of the Code refers to a "professional relationship with a client", but that she has never had the privilege of clients because "...the LSA prevented me from having clients..." and, therefore, the Code does not apply to her.
35. Ms. Eraga submits that the conduct at issue occurred in her private life so is not relevant.
36. Ms. Eraga argues that the authorities submitted by the LSA are irrelevant to her case as they all reflect lawyer/client relationships, which she has never had.
37. Ms. Eraga provided 13 cases in her book of authorities for the hearing and at the hearing cited four of the cases in support of her submissions, summarized in the following paragraphs.

38. In *Leontowicz v. College of Physicians and Surgeons of Saskatchewan*, 2022 SKQB 98, a physician was found guilty by a disciplinary hearing committee of the College of Physicians and Surgeons of Saskatchewan (College) of unprofessional conduct in his private life and was suspended indefinitely, received a reprimand, and was assessed costs. The physician appealed the College's decision to the Saskatchewan Court of Queen's Bench. The Saskatchewan Court of Queen's Bench allowed the physician's appeal and quashed the finding of professional misconduct against him. Ms. Eraga notes similarities to her case including that the conduct occurred in his private life, there was no physician/patient relationship, no charges were laid, and the case was not publicized. Ms. Eraga submits that in her case there was no lawyer/client relationship and the public have no knowledge of her case. Therefore, in her opinion, there is no evidence that she has harmed the public or the profession, and consequently no need for denunciation. She also submits that there is no need for a notice to the profession in this case.
39. Ms. Eraga pointed to two of the factors considered in *Gounden (Re)*, 2021 LSBC 07 at paragraph 75, as follows:
- 1) the nature and gravity of the conduct proven. Ms. Eraga submits that her conduct was private in nature and not serious. Further, she submits that, unlike *Gounden*, no clients were harmed, as she did not have clients,
 - 2) the age and experience of the respondent. Ms. Eraga submits that, including her training in Nigeria she has worked 29 years in the profession of law. Further, she submits that, in Canada she is a student, has no clients and although she completed the CPLED program, has no experience.
40. In *Law Society of Alberta v. Jodie Holder*, 2007 LSA 6 the lawyer was found guilty of failing "...to report criminal charges laid, including failing to disclose such charges in a complete and appropriate manner on an inquiry which invited such disclosure, and that all such conduct is conduct deserving of sanction" (at paragraph 17). Ms. Eraga submits that, as proceedings regarding her criminal charges were ultimately stayed, they were not actually laid and therefore she had no disclosure responsibility. Further, she submits that treating her public mischief charge as "laid" is an injustice toward her and she questioned if such injustice was motivated by the fact that she is a Black woman.
41. *Hammoud*, referenced earlier by LSA counsel, is a case where the student-at-law was found guilty of four citations including conduct unbecoming, lack of candour with the LSA and another lawyer and failure to adhere to Rule 105 regarding reporting offences. The student-at-law was deregistered and ordered to pay full costs. Ms. Eraga submits that this case must be distinguished from hers in that criminal charges were not "laid", as she interprets the term.

42. Ms. Eraga admits that she rejected her former counsel's recommendation to collaborate on a joint submission on sanction because her case is different. She submits her case has nothing to do with the profession, no one was harmed, she has no obligations as a suspended student-at-law and there is no evidence of her ungovernability.
43. Exhibit 33, submitted by Ms. Eraga, consisted of two letters from:
- 1) Dr. [J.M.], October 29, 2021, oncologist, who provided chemotherapy following Ms. Eraga's July 30, 2021 surgery.
 - 2) [K.M.], February 23, 2023, psychologist, who met with Ms. Eraga on January 12 and February 23, 2023.
44. Exhibit 34, submitted by Ms. Eraga, consisted of 12 letters of reference: six from former colleagues or employers in Nigeria and six from current friends or community members.

Analysis and Decision on Sanction

45. In conducting our analysis, we have considered the cases provided by Ms. Eraga, the cases provided by LSA counsel, the Guideline and the Code.
46. In its Merits Decision, the Committee found Ms. Eraga guilty of conduct deserving of sanction in relation to five citations, pursuant to section 49 of the *Act*, which reads:

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- a) is incompatible with the best interests of the public or of the members of the Society, or
- b) tends to harm the standing of the legal profession generally, is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta. [Emphasis added]

47. The Committee does not accept Ms. Eraga's submissions that the citations are unjustified and unproven, that only conduct arising from incompetency may be considered and that conduct in private life, off-duty behaviour, is exempt.
48. The relevance of lawyer conduct, related proceedings and sanctions to students-at-law is found in sections 49(4) and 49(5) of the *Act*:

49(4) Except as otherwise provided, this Part and the rules under this Part apply to students-at-law.

49(5) For the purpose of applying subsection (4) and without limiting the generality of that subsection,

- a) references to a member include a student-at-law;
- b) 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;
- c) references to the suspension of the membership of a member are, in relation to a student-at-law, to be read as references to the suspension of the registration of the student-at-law;
- d) references to the reinstatement of the membership of a former member shall, in relation to a former student-at-law, be read as references to the reinstatement of the registration of the former student-at-law. [Emphasis added]

49. The Committee does not accept Ms. Eraga’s submission that as a suspended student-at-law, she has no obligations to clients or the LSA, is not a lawyer, and therefore not subject the *Act*, given the clear wording in section 49 of the *Act*.
50. The Committee rejects Ms. Eraga’s submission that since the conduct occurred her in private life, it is not relevant. Ms. Eraga’s private conduct was found to be professional misconduct because there was a “sufficient nexus or relationship ... between the personal conduct and profession to engage the regulator’s obligation to promote the public interest, ... the impugned conduct ... would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct.”⁴
51. Further, the Committee analyzed these issues in the Merits Decision at paragraphs 130 to 133 and decided (at paragraph 137) that the conduct was deserving of sanction for several reasons, including:
- The conduct would reasonably tend to harm the standing or reputation of the legal profession. A reasonable person, when viewing these circumstances objectively, would be left with an almost certain negative view of lawyers.
52. The Guideline notes at paragraph 198 that the prime determinant for appropriateness of sanction is the seriousness of the conduct. The Committee agrees with LSA counsel’s

⁴ *Leontowicz*, paragraph 174 quoting from *Strom v. Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 at paragraph 89.

submission that Ms. Eraga's conduct is very serious. With respect to the Guideline's factors to be considered when assessing seriousness, the Committee finds that Ms. Eraga's misconduct:

- a) constitutes a risk to the public and to the reputation of the legal profession;
 - b) reduces the ability of the legal system to function properly through her interference with both the police and LSA investigators and through her breach of an undertaking to LSA;
 - c) reduces the LSA's ability to effectively govern its members by her ungovernability;
 - d) occurred repeatedly as evidenced by her disciplinary record; and
 - e) occurred over a long period of time.
53. Ms. Eraga makes little reference to the Guideline factors for assessing seriousness in her submission. She does, however, submit that her off-duty conduct is not serious, that no one was harmed and that she does not pose a risk to the public or the reputation of the profession because she has no clients. The Committee does not accept Ms. Eraga's assessment of the nature and gravity of her misconduct.
54. The Committee agrees with LSA counsel's submission that Ms. Eraga lacks integrity and is not governable. The Committee also agrees that the appropriate sanction in this case is disbarment or termination of registration in Ms. Eraga's case.
55. The Committee agrees that the following three authorities provided by LSA counsel, all of which ordered disbarment are somewhat analogous to Ms. Eraga's circumstances. These authorities reference the factors underlying the purpose of sanction, which the Committee found relevant in this matter.
56. Ms. Eraga's conduct raises serious concerns about the protection of the public, about maintaining public confidence in the legal profession and about the professions ability to self-govern. In *Hammoud*, referenced earlier, the hearing committee in that case stated the following, at pages 15-18:

It is important to send a message to the public that the Law Society's oversight of the integrity of those practicing law starts with students at law...A message needs to be sent to those who apply for membership with the Law Society that every applicant must be candid with their regulator and with other lawyers and must comply with the Rules of the Law Society from the moment they apply to practice.

...

With respect to the potential for the Member's rehabilitation, a person is or is not honest, and possesses or does not possess integrity...The Member has demonstrated his lack of professionalism and lack of integrity as a student and it is sufficient to make it clear that he is unsuitable to practice law and will not enhance the profession in any way.

...

The Member's conduct raises concerns about the ability of the legal system to function properly. The Member's word is not his bond. He does not tell the truth if it does not suit him. If challenged he offers that the truth is how he sees it based on his version of reality.

...

The Member's conduct raises concerns about the ability of the Law Society to effectively govern all of its members.

57. In *Power*, also referenced earlier in this decision, the LSBC hearing panel stated (at paragraph 36):

Dishonesty in connection with an application for admission as a member is a serious matter. Admission to profession is a privilege and requires the applicant to show that he is of good character. Integrity is a fundamental quality of a member of the profession. This requires a person to act in the utmost good faith with respect to the governing body of the legal profession.

58. The *Power* hearing panel also approved of the following quote from *Karlsson (Re)*, 2009 LSBC 3 (at paragraph 37):

The practice of law is based on honesty. The profession could not function at all if judges, other lawyers, and members of the public could not rely on the honesty of lawyers. Anything that undermines trust that society places on lawyers is a serious blow to the profession...This Panel regards dishonesty as one of the most serious forms of conduct unbecoming or professional misconduct.

59. In *Virk*, that hearing committee stated the following poignant observations (at paragraph 34):

These statements occurred in a number of instances over a protracted period of time...we believe that the LSA, the public and the profession cannot adequately be protected by his suspension...other members of the profession should...be aware that such conduct is unacceptable and will result in very serious sanctions...we

believe by the disposition we make that the public at large can be comforted to some degree that the profession places integrity above self-interest.

60. Turning to the *Gouden* decision referenced by Ms. Eraga, the Committee finds the following consolidated factors listed in paragraph 78 as relevant:
- 1) Nature gravity and consequences of conduct;
 - 2) Character and professional conduct records of the respondent;
 - 3) Acknowledgement of the misconduct and remedial action; and
 - 4) Public confidence in the profession including public confidence in the disciplinary process.
61. Ms. Eraga submits that some of the factors listed in paragraph 75 of *Gouden* do not apply to her. The Committee rejects that submission and refers, in particular, to the following factors:
- a) the nature and gravity of the conduct proven – her conduct is very serious;
 - b) the age and experience of the respondent – Ms. Eraga is 49 years old and experienced; as noted in the Merits Decision paragraph 32: “Ms. Eraga testified that she practiced as a lawyer from 1995-2013 in Nigeria in various settings, including as a criminal prosecutor and that she had completed her articles and the CPLED program as a student in law.”
 - c) the previous character of the respondent, including details or prior discipline – Ms. Eraga has been previously disciplined, for similar misconduct.
62. Ms. Eraga referred to the *Holder* decision regarding the reporting of criminal charges laid and submits that her case is different in that her charges were ultimately stayed. The Committee does not accept Ms. Eraga’s differentiation or her rationale that if charges are stayed, they are not considered laid. The Committee refers to section 579(1) and (2) of the *Criminal Code*, R.S.C., 1985 C. C-46 which states that when proceedings are stayed by the Attorney General, the Attorney General may recommence proceedings at any time.
63. Ms. Eraga further submits that treating her public mischief charge as “laid” was based on the fact that she is a Black woman. Ms. Eraga implies that there has been systemic racism in how her case was handled by the LSA and alleges discrimination by the LSA. The Committee carefully considered this submission. The records of the LSA, which have been entered as exhibits in this matter, confirm that Ms. Eraga’s charges were considered appropriately, and in accordance with the law. The facts in this case are

clear: there were criminal charges laid against Ms. Eraga, the criminal charges were in existence at the time of her application for reinstatement and she failed to report them in her application for reinstatement. The LSA and this Committee take allegations of systemic racism and discrimination seriously. The Committee finds that there is simply no basis, in the record of this case, to support such allegations.

64. The Committee does not accept most of the other authorities submitted by Ms. Eraga, as the circumstances in most of the other cases are generally not analogous to hers. Ms. Eraga's references to the authorities is in the context of her false understanding of her public mischief charge and of off-duty conduct. Ms. Eraga's authorities generally order either a short suspension or a reprimand. Ms. Eraga argued for a suspension or reprimand, simultaneously denying any wrongdoing, which is illogical. The Committee does not accept that the public or the reputation of the profession would be adequately protected through a suspension or reprimand, in Ms. Eraga's case.
65. There are two significant factors that, in the Committee's view, make Ms. Eraga's misconduct egregious and thus require a more severe response.
66. Ms. Eraga displays a general ignorance of the law, the Rules and the Code. She practiced as a lawyer in Nigeria and earned her NCA designation, completed the CPLED program and articles in Canada, yet misinterprets the *Act*, and the Code. She should know better.
67. Ms. Eraga's disciplinary record displays a pattern of misconduct; repetitive instances of lack of candour and dishonesty. Paragraph 205 of the Guideline states "[t]he sanctions imposed for conduct deserving of sanction are cumulative and prior misconduct will result in increasingly serious sanctions."
68. The Committee finds no significant mitigating factors. The letters from Ms. Eraga's oncologist and psychologist bear no connection or causal effect to the misconduct in question, which took place long before consultation with these professionals. The character references are given no weight; most make no reference to Ms. Eraga's citations and half were provided prior to the misconduct.
69. Having heard submissions on sanction, reviewed the case law and considered all of the general and specific factors above, the Committee has determined that Ms. Eraga's registration with the LSA shall be terminated.

Costs

Submissions on Costs

70. The Estimated Statement of Costs (Exhibit 34), in the total amount of \$132,440.22, was provided by the LSA in accordance with Rule 99(1). LSA counsel argues that, while the

amount is high, it is reasonable and proportionate. The costs, according to LSA counsel, are reflective of the complexity arising from Ms. Eraga's lack of cooperation throughout the investigative process, deceptions and continued denials, including:

- a) Investigations continued and became time-consuming due to Ms. Eraga's failure to admit to any of the allegations; and
- b) Experts were necessary due to Ms. Eraga's deceptions in the eye-witness statement and in photo evidence, to provide detail, expertise and oral evidence.

71. LSA counsel submits that the actual costs are reasonable, given that the hourly rate of \$125 per hour for LSA counsel is well below market rate. Nevertheless, the Estimated Statement of Costs submitted by LSA includes a reduction of the total hours related to LSA counsel from 567.5 to 400 (29.5% reduction in hours), thereby reducing the total costs sought by LSA to \$110,455.84.
72. LSA counsel also referred the Committee to the Alberta Court of Appeal cases of *Tan v. Alberta Veterinary Medical Association*⁵ and *Jinnah v. Alberta Dental Association and College*⁶ which discuss costs in the context of disciplinary proceedings. LSA counsel also pointed to *Law Society of Alberta v. Beaver*⁷ in which the LSA appeal panel provided consideration of those cases in a decision issued only recently.
73. Ms. Eraga, in her submissions on costs, acknowledges that the party guilty of conduct deserving of sanction pays costs. She disputes that she was guilty of any conduct since her conduct was in her private life and off-duty and as such, she submits that her conduct was not "professional conduct". For the reasons noted above in this decision and in the Merits decision, the Committee rejects Ms. Eraga's submission that since the conduct occurred her in private life, it is not relevant. The Committee finds that Ms. Eraga's conduct was guilty of professional misconduct.

Analysis and Decision on costs

74. The Guideline states the following with respect to the costs arising from hearings:

216. If a lawyer is found guilty of conduct deserving of sanction, the Hearing Committee may order the lawyer to pay all or part of the costs of the Conduct Proceedings pursuant to s.72(2)(c) of the Act and Rule 99.

....

⁵ *Tan v. Alberta Veterinary Medical Association*, 2022 ABCA 221.

⁶ *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336.

⁷ *Law Society v. Beaver*, 2023 ABLS 4.

221. It is the Law Society's default position that when a lawyer is found guilty of conduct deserving of sanction, the actual costs of the hearing should be paid by the lawyer. This position is based on the proposition that the hearing expenses incurred in the exercise of the Law Society's statutory obligations are appropriately charged to the lawyer whose conduct is under scrutiny.
75. Guided by the above principles, the Committee finds that the costs sought by LSA of \$110,455.84 are reasonable and payable by Ms. Eraga. To mitigate the impact of the costs, Ms. Eraga is given two years from the issuance of this decision to pay the costs. The reasons for this decision follow.
76. While Ms. Eraga did not make submissions specifically about *Jinnah* or reduction of costs based on that case, the Committee feels it is only fair to address it. In that case, a dentist was subject to disciplinary proceedings under the Health Professions Act. Dr. Jinnah was found guilty of unprofessional conduct for threatening a defamation action if her patient filed a conduct complaint arising out of her billing practices. Dr. Jinnah obstructed the complaint process but her billing conduct, while careless, was determined not to be misconduct. The initial costs finding by the tribunal was \$50,000.00 for a two-day hearing, which was reduced to \$37,500.00 by the internal appeal panel.
77. In *Jinnah* the costs were further reduced by the Court of Appeal, because as noted at paragraphs 122 to 124, the hearing concerned "one allegation by a single patient unrelated to patient care on the low end of the seriousness scale."
78. In addition to the *Beaver* decision, the Committee notes that the subsequent LSA hearing committee decision of *Law Society of Alberta v. Ralh*⁸, which was issued after this oral hearing on March 29, 2023, also discusses the Alberta Court of Appeal decision in *Jinnah* with respect to costs.
79. The Court of Appeal in *Jinnah* analyzed principles related to the awarding of costs in disciplinary proceedings, briefly summarized by the hearing committee in *Ralh* at paragraphs 42 - 44 as follows:

These principles set out that:

- a) awards of costs are not supposed to be a sanction;
- b) generally the profession as a whole and not the individual member being sanctioned should pay the costs of disciplinary proceedings.

At paragraphs 128 to 144 of *Jinnah*, the Court of Appeal set out four circumstances where substantial cost awards are appropriate:

⁸ *Law Society of Alberta v. Ralh*, 2023 ABLS 9.

- a) when a member has engaged in serious misconduct;
 - b) when the member is a serial offender;
 - c) when the member fails to cooperate with the regulator's investigation; and
 - d) when the member is guilty of hearing misconduct.
80. The hearing committee in *Ralh* also indicated that “[t]here may well be a live question as to whether the legal profession as a whole should generally bear costs of disciplinary proceedings under the *Act*.” However, they decided they did not need to canvass that question because, in that case, the member’s conduct fell within the scenarios provided by the Court of Appeal that warranted substantial costs.
81. In Ms. Eraga’s case, the circumstances are such that the Committee is able to take the same approach as in *Ralh*. The Committee finds that Ms. Eraga’s conduct is serious professional misconduct (*Jinnah*, factor #1). Ms. Eraga has a previous disciplinary record so she would fall within the category of serial offender (*Jinnah* factor #2). Ms. Eraga failed to cooperate with the LSA investigators and forced the LSA to expend more resources to ascertain the facts and, as such, Ms. Eraga cannot, with justification, object when ordered to pay costs set at an amount roughly equal to the unnecessary expenditures attributable to her intransigence (*Jinnah*, factor #3).
82. The Committee also finds that the costs claimed by the LSA are very reasonable. The rates are based on a tariff that is over two decades old. Counsels’ hourly rates claimed are significantly less than market rates. Additionally, the Committee is further satisfied by the reduction of the costs by almost 30% by LSA.
83. The public and the profession would reasonably expect that Ms. Eraga bear the burden of the costs of these proceedings for this very serious misconduct.

The Referral

84. LSA counsel referenced section 78(6) of the *Act*, which states as follows:

Notwithstanding subsections (1) to (4), if following a hearing under this Division, the Hearing Committee or the panel of Benchers is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Hearing Committee or the panel, as the case may be, shall forthwith direct the Executive Director to send a copy of the hearing record to the Minister of Justice and Solicitor General. [Emphasis Added]

85. LSA counsel submitted that a referral was necessary. They argued that the issue turns on whether "there are reasonable and probable grounds to believe" that Ms. Eraga committed a criminal offense. They referred to sections 366(1) (Forgery) and 368(1) (Use of a Forged Document) of the *Criminal Code*, both of which are indictable offences.
86. The facts, specifically, Ms. Eraga's creation of a false eyewitness statement and false photo evidence, support the findings of guilt regarding Citation 2 and Citation 3. The Committee, therefore, finds that reasonable and probable grounds exist. As stated by the hearing committee in *LSA v. Amantea*⁹, the wording of section 78(6) permits no discretion once reasonable and probable grounds are found. Therefore, in this case, a referral is mandatory. Accordingly, the Committee orders a referral to the Minister of Justice and Solicitor General as set out in section 78(6) of the *Act*.

Concluding Matters

87. Considering all the above, the Committee orders the termination of Ms. Eraga's registration, effective immediately. Ms. Eraga shall pay costs of the proceedings in the amount of \$110,455.84 by May 10, 2025.
88. A referral to the Minister of Justice and Solicitor General is ordered.
89. There shall be Notice to the Profession pursuant to section 85 of the *Act*.
90. 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 Ms. Eraga will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated May 10, 2023

Louise Wasylenko - Chair

Ronald Sorokin

⁹ *LSA v. Amantea*, 2020 ABLs 14.

Edith Kloberdanz