

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

AND

**IN THE MATTER OF AN APPEAL
REGARDING AJAY JUNEJA
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Appeal to the Benchers Panel

Grant Vogeli, K.C.- Chair
Glen Buick – Lay Bencher
Scott Matheson - Bencher
Kelsey Meyer - Bencher
Sharilyn Nagina, K.C. - Bencher
Mary Ellen Neilson - Lay Bencher
Ron Sorokin - Bencher
Nicole Stewart - Bencher

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta
Simon Renouf, KC – Counsel for Ajay Juneja

Hearing Date

June 25, 2024

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

TABLE OF CONTENTS

OVERVIEW	3
PRELIMINARY MATTERS	4
BACKGROUND	4
STANDARD OF REVIEW	5
ANALYSIS	7
Citation 1: Breach of Practice Restrictions	7
Citation 2: Misleading Another Lawyer	10
Citation 3: Abstention	12
Citation 4: Failure to be Candid	16
Citation 5: Discreditable Conduct.....	18
Citation 6: Lack of Candour.....	25
EVIDENTIARY ISSUES	27
Adverse inference	28
Collusion	29
Credibility	30
SANCTION.....	31
COSTS	38
DELAY	41
CONCLUDING MATTERS	42

OVERVIEW

1. This is an appeal of the findings of the hearing committee (Hearing Committee).
2. Mr. Juneja was found guilty of conduct deserving of sanction in relation to six citations.
 - 1) That he failed to comply with an undertaking to restrict his practice to criminal and personal injury law.
 - 2) That he misled opposing counsel about his authorization to act on a matter.
 - 3) That he failed to comply with an undertaking to abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs were prescribed.
 - 4) That he failed to be candid with the Law Society about his use of alcohol and drugs.
 - 5) That he conducted himself in a manner that brought discredit to the profession.
 - 6) That he failed to be candid when informing the Law Society about being criminally charged.
3. A conduct hearing was held on July 26, 27, 28, and 29, 2021 and September 20 and 21, 2021. Reasons for a decision on the merits were issued by the Hearing Committee on April 13, 2022 (Merits Decision). A sanction hearing was then held on April 5, 2023 and a sanction decision was issued on August 24, 2023 (Sanction Decision).
4. Pursuant to section 75 of the *Legal Profession Act (Act)*, Mr. Juneja appealed the Hearing Committee's findings on merits and sanction.
5. Mr. Juneja raised the following grounds for appeal in his Notice of Appeal:

Merits Decision

That the Hearing Committee erred in:

- a. failing to identify appropriate tests for considering credibility of witnesses; and
- b. failing to properly assess the evidence or otherwise in making credibility findings.

Sanction Decision

The Hearing Committee erred in imposing unfit sanctions by:

- a. imposing sanctions disproportionate to the factually proven unprofessional conduct;
- b. imposing sanctions including suspension and costs that failed to take into account mitigating factors; and

- c. imposing sanctions including suspension and costs that are inconsistent with precedent, and which were unreasonable.
6. On June 25, 2024, a panel of Benchers (Appeal Panel) conducted a hearing of Mr. Juneja's appeal.
7. After reviewing the Merits Decision, the Sanction Decision, the written submissions on behalf of the Law Society of Alberta (LSA) and Mr. Juneja and considering the oral submissions on behalf of the LSA and Mr. Juneja, for the reasons set out below, the Appeal Panel finds that:
 - The Hearing Committee's findings of guilt of conduct deserving of sanction are upheld in relation to 5 of 6 citations;
 - The Hearing Committee's order imposing a 15-month suspension is reduced to a 5-month suspension; and
 - The Hearing Committee's decision that Mr. Juneja pay costs of \$133,670.92 by May 1, 2027 is reduced to \$45,000.00 to be paid in three installments of \$15,000.00 on January 1, 2027, June 30, 2027 and December 31, 2027.

PRELIMINARY MATTERS

8. There were no objections to the constitution of the Appeal Panel or its jurisdiction, and a private hearing was not requested. Therefore, a public hearing of Mr. Juneja's appeal proceeded.

BACKGROUND

9. Ajay Juneja was admitted to the Alberta Bar in 2004. He practices and resides in Edmonton.
10. Mr. Juneja has a history of misconduct and discipline with the LSA:
 - In 2011 he was suspended for four and a half months (along with a reprimand and fine) after being found guilty of 11 citations including swearing false affidavits of execution and failing to be candid with the LSA.
 - In 2013 he was suspended for one day and ordered to pay \$25,000.00 in costs after being found guilty of breaching undertakings to the LSA and another lawyer.
 - In 2014 he was suspended for 2 months and ordered to pay costs of \$35,000.00 after being found guilty of 2 citations related to failing to serve clients in a conscientious, diligent and efficient manner.

11. In relation to Mr. Juneja's history of misconduct and discipline, on February 18, 2015, a Practice Review Reinstatement Panel of the LSA issued a decision that required Mr. Juneja to sign written undertakings in order to practice. Mr. Juneja signed those undertakings on March 3, 2015, which included undertakings 3 and 9:
- 3) (Practice Restrictions) Restrict my practice to criminal and personal injury law subject to reapplication to the Practice Review Committee.
 - 9) (Abstention) Abstain from alcohol and all other psychoactive (mood altering) substances unless such drugs are prescribed by a physician who is fully aware of my substance dependence and feels that their use is necessary.
12. The March 3, 2015, undertakings contained the following statement:
- I understand that I am bound by these undertakings as a condition of my reinstatement to the LSA, and that they shall remain in effect (and I will continue to be bound by them), until I am advised in writing that they have been varied or removed.
13. The practice restrictions limiting Mr. Juneja to practicing only criminal and personal injury law have never been varied or removed. The undertaking to abstain from alcohol and psychoactive substances has never been varied or removed.
14. There were two complaints against Mr. Juneja that resulted in the six citations against him that are listed in paragraph 2 of this decision. The citations relate to:
- Breaching his practice restrictions and undertakings by consuming drugs and alcohol and acting as a lawyer on cases that were not criminal or personal injury.
 - Inappropriate conduct in the early hours of September 15, 2018, when Mr. Juneja instigated a fight with security staff at an after-hours club. After the altercation with the security staff, he was arrested. While in police custody he was physically resistive to police, threatened them and challenged them to fight.
 - Not being candid with the LSA about his alcohol and drug use and the circumstances leading to the criminal charges against him related to his conduct on September 14-15, 2018.

STANDARD OF REVIEW

15. Section 76(1) of the *Act* provides that an appeal is on the record. Section 76(1) states:

76 (1) If an appeal is taken to the Benchers under section 75, the Benchers shall, as soon as practicable and subject to compliance with section 75, hold a hearing to:

- a) consider the hearing report and the hearing record, and
- b) hear any representations of the member or the member's counsel respecting the appeal.

16. The standard of review on an appeal of a disciplinary tribunal is described in paragraph 35 of *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98:

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 witness, should be afforded significant deference;
- b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
- c) with respect to decisions on questions of law by the discipline tribunal arising from the profession's home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;
- d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well-positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: *Newton* at para. 79. It obviously should not disregard the views of the discipline tribunal or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;
- e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession; and
- f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

17. The Alberta Court of Appeal recently confirmed the appropriate standard of review for an appeal panel of a professional disciplinary body in *Charkhandeh v. College of Dental Surgeons of Alberta*, 2025 ABCA 258. In that case, the Court of Appeal summarized the analysis of the standard of review in *Yee* and reiterated that:

- The appeal is not a de novo hearing; and
- The appeal panel should focus on articulable errors of principle or unreasonableness in the decision under appeal.

18. Paragraph 48 of the *Charkhandeh* decision states:

The standard review to be applied by an appeal tribunal in a professional disciplinary context was discussed in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98 at paras. 31-5, 9 Alta LR (7th) 10. *Yee* encourages tribunals to remain focused on whether the decision is tainted by errors of law, errors of principle, or is not reasonably sustainable, rather than seeking to apply abstract standards of review. Findings of fact and credibility, and inferences drawn from them should be afforded significant deference. The appeal tribunal should not depart from these findings unless there is some articulable reason for disagreeing. The appeal tribunal can also intervene where there is a perception of unreasonableness, error of principle, potential injustice or another sound basis to do so. Decisions engaging the expertise of the profession (such as expected standards of conduct or health care) should be reviewed for error of principle, potential injustice or unreasonableness. In short, the appeal tribunal is to conduct an appeal, not a rehearing, and should focus on articulable errors of principle or unreasonableness in the decision under appeal.

ANALYSIS

Citation 1: Breach of Practice Restrictions

19. This citation alleges that Mr. Juneja failed to comply with his undertaking to the LSA to restrict his practice to criminal and personal injury law. The alleged particulars are that Mr. Juneja:

- (a) acted for the Defendant in a Court of Queen's Bench action, which was neither a criminal or personal injury matter; and
- (b) acted for the Defendant in another Court of Queen's Bench action, which was neither a criminal or personal injury matter.

Facts

20. Mr. Juneja undertook to the LSA to restrict his practice to criminal and personal injury law. He was practicing under the supervision of J.C. who was appointed by the LSA. Mr. Juneja participated in the conduct of two files that were not criminal or personal injury.

L.H. Litigation

21. L.H. was another lawyer practicing with J.C. in the same firm as Mr. Juneja. L.H. left J.C.'s firm and filed a Statement of Claim against the firm alleging that the firm refused to properly transfer files and trust money to her. J.C. asked Mr. Juneja to act for the firm in defending the claim by L.H. Mr. Juneja represented the firm in the litigation with L.H. He

filed affidavits, cross-examined on an affidavit and attended Chambers on behalf of the firm.

A.O. Litigation

22. J.C. was acting for a party in a civil action relating to a commercial dispute. Opposing counsel was attempting to schedule Questioning for Discovery and J.C. was unavailable. J.C. instructed Mr. Juneja to conduct the Questioning as his agent. J.C. was of the view that Mr. Juneja would not be breaching his undertaking to the LSA because he would be appearing as J.C.'s agent and Questioning "would not take more than 5 (five) minutes". Mr. Juneja conducted the Questioning and sent correspondence related to the litigation.

Decision of the Hearing Committee

23. The Hearing Committee found that Mr. Juneja breached his undertaking to restrict his practice to criminal and personal injury matters. The essence of the Merits Decision is that:
- The undertaking was clear and unequivocal;
 - The L.H. matter was a civil action that was not personal injury;
 - Acting for his employer did not mean that Mr. Juneja was not practicing law;
 - Mr. Juneja was practicing law when acting for the firm against L.H. by conducting Questioning and appearing in court.
 - The A.O. litigation was a corporate commercial matter that was outside the scope of the undertaking;
 - Mr. Juneja conducted a cross-examination in the action, which was practicing law; and
 - Acting as an agent does not mean that Mr. Juneja was not practicing law.

Position of Mr. Juneja

24. It was argued on behalf of Mr. Juneja that the Hearing Committee erred in finding that he breached the undertaking for the following reasons:
- He acted in both the A.O. litigation and the L.H. litigation at the direction of his LSA appointed supervisor, J.C.;
 - He did so as an agent of J.C.;
 - The L.H. litigation related to criminal law files and he was acting for his own firm so it was not outside his practice restrictions;
 - Mr. Juneja received no personal gain. All of the work was done without remuneration;

- There was no concealment by Mr. Juneja. All of his email messages included in the signature line a statement that his practice was restricted to personal injury and criminal law; and
- There were only two isolated incidents in several years of practicing under the undertakings, so even if Mr. Juneja was in violation of the undertaking and practice restrictions, it was not conduct deserving of sanction.

Position of the LSA

25. Counsel for the LSA submitted that the Hearing Committee provided a comprehensive analysis of the citation and an internally coherent and rational chain of analysis that is justified based on the facts and law.
26. Counsel for the LSA pointed out that the Merits Decision set out the following analysis and conclusion:
 - The undertakings and practice restrictions were clear and applied until varied or removed by the LSA;
 - The undertakings and practice restrictions were not varied or removed;
 - The obligation to comply with the undertakings and practice restrictions was on Mr. Juneja. His supervisor's views mitigated in favour of Mr. Juneja, but the onus was still squarely on him;
 - The fact that he was acting for his own firm in the L.H. litigation did not mean that he was not practicing law outside his undertakings and practice restrictions;
 - The A.O. litigation was clearly a corporate/commercial litigation matter outside Mr. Juneja's undertakings and practice restrictions; and
 - The undertakings and practice restrictions were clear. Mr. Juneja knew they had to be complied with unless removed or varied. They had not been varied or removed and Mr. Juneja acted as counsel in the A.O. and L.H. litigation.

Decision of the Appeal Panel

27. The Appeal Panel concludes that the Merits Decision of the Hearing Committee was reasonable and should not be overturned in relation to the A.O. litigation. Mr. Juneja acted as a lawyer in the A.O. litigation. It was a commercial matter outside Mr. Juneja's restricted scope of criminal and personal injury cases. The fact that Mr. Juneja was acting under the direction of his supervisor or as an agent on behalf of his supervisor does not mean that he was not practicing law in a matter that was not criminal or personal injury. Mr. Juneja gave the undertakings, and it was his obligation to comply with them. He failed to comply with the undertakings and that failure is conduct deserving of sanction.
28. In relation to the L.H. litigation the Appeal Panel concludes that Mr. Juneja technically breached the undertakings but that the Hearing Committee erred in finding that it was conduct deserving of sanction. Although the L.H. litigation was a civil matter that was not

personal injury there were several mitigating circumstances that the Hearing Committee overlooked. Properly considering all of the mitigating circumstances, it was not reasonable to have found the conduct deserving of sanction. Those mitigating circumstances include:

- He was acting for his own firm;
- He was acting at the request of his LSA appointed supervisor;
- The issues underlying the litigation were exclusively related to criminal files;
- The litigation did not relate to any clients, only a former member of the firm; and
- He did not receive any payment or personal gain.

Reviewing the conduct related to the L.H. litigation in isolation, a Conduct Committee of the LSA would not proceed with issuing a citation. A reasonable hearing committee would not find the conduct deserving of sanction.

29. For the above reasons, the Appeal Panel overturns the finding of guilt in relation to the L.H. litigation. However, because the finding of guilt in relation to the A.O. litigation is not being overturned the overall finding of guilt on citation 1 is not overturned.

Citation 2: Misleading Another Lawyer

30. This citation alleges that Mr. Juneja misled opposing counsel, N.T., as to his authority to act on a specific matter. In particular, that Mr. Juneja emailed N.T. on May 24, 2018 saying that he was acting in accordance with his practice restrictions and with authorization of the LSA, which statements were untrue.

Facts

31. N.T., the lawyer acting for L.H. in the L.H. litigation noticed that there was a practice restriction noted on the bottom of emails from Mr. Juneja. N.T. sent an email to Mr. Juneja saying:

I've been alerted to the attached Decision and Order from the Law Society of Alberta, dated January 3, 2014. It appears to restrict your practice to criminal defence and personal injury, with J.C. supervising you and undertaking to ensure that these are the only areas you practice, until such time as you satisfy the Law Society committee otherwise.

Obviously, this litigation is neither criminal defence or personal injury. However, I appreciate that this Order was 3 years ago and I do not know what has transpired since. I trust that since J.C., your supervisor in this Order, is the one who retained you to represent him and since you have confirmed that you are acting in this litigation, that you are in compliance with this or subsequent Law Society conditions. Please confirm.

32. Mr. Juneja replied, saying:

I have spoken with the Law Society on occasions concerning my representation of our firm and matters such as this including taxations. I am acting in accordance with my current conditions.

33. Mr. Juneja acknowledged during the hearing that he had never contacted anyone at the LSA to ask if he could act on the L.H. matter or in relation to taxation matters. Mr. Juneja testified that he believed the L.H. litigation was within the purview of criminal law because it related to criminal law files, and that he believed the LSA was aware he was acting on taxation type matters because he had mentioned it in a meeting with a LSA representative.

Decision of the Hearing Committee

34. The Hearing Committee concluded that Mr. Juneja misled N.T. in his email reply by making two untrue statements. In particular, by saying that he was acting in accordance with his practice restrictions and that he had authority from the LSA to act in the L.H. litigation.
35. Section 7.2-2 of the LSA Code of Conduct (Code) provides that no lawyer is entitled to deliberately mislead another lawyer. The Hearing Committee found that Mr. Juneja's email to N.T. was misleading and therefore a breach of section 7.2-2.

Position of Mr. Juneja

36. Counsel for Mr. Juneja submitted that Mr. Juneja's email communications with N.T. were not misleading because they all contained a statement saying, "Practice Restricted to Personal Injury and Criminal Law". He also submitted that Mr. Juneja believed he was acting within his restrictions and undertakings because he was self-representing his own firm in what was essentially a fee dispute with a former employee about criminal files, under the express direction and authorization of his LSA-imposed supervisor.

Position of the LSA

37. Counsel for the LSA submitted that there were two misleading statements in Mr. Juneja's email to N.T. His written submissions stated:

The statement that Mr. Juneja had spoken to the LSA concerning his representation of this firm, "*in matters such as this*" is misleading for the following reasons:

- 1) The only matters caught by this statement are the L.H. matter or the A.O. matter;
- 2) Mr. Juneja admitted that he had never discussed either matter with anybody at the LSA;
 - a. I never spoke with anyone at the Law Society specifically about this matter or the A.O. litigation, and that's not what my message says.

- b. What I'm saying to you is, no I did not address those matters specifically with the Law Society...

The statement that Mr. Juneja had spoken to the LSA on occasions about representing his firm in matters such as this, "*including taxations*" is misleading because none of the LSA witnesses had any notes or recollections about any such conversations and Mr. Juneja acknowledged that he had not spoken to anyone at the LSA about the L.H. or A.O. litigation.

38. Counsel for the LSA submitted that Mr. Juneja misled N.T. in his email by including incorrect and confusing information and wording when he knew that the LSA had not authorized him to act on matters similar to the L.H. matter.

Decision of the Appeal Panel

39. The Appeal Panel concludes that the decision of the Hearing Committee was reasonable and should not be overturned. N.T. very clearly asked Mr. Juneja whether he was complying with the practice restrictions imposed by the LSA. Mr. Juneja replied saying that he had spoken with the LSA about acting on similar matters and that he was "acting in accordance with my current conditions". Mr. Juneja knew that the restrictions had not been lifted or modified. He acknowledged that he had not discussed acting on the L.H. or A.O. matters with anyone from the LSA. The Hearing Committee reasonably concluded that Mr. Juneja had never discussed acting on taxation matters with anyone at the LSA. Accordingly, the Hearing Committee's finding that Mr. Juneja's email to counsel for L.H. was untrue and misleading was reasonable. The finding of guilt on citation 2 is upheld by the Appeal Panel.

Citation 3: Abstention

40. This citation alleges that Mr. Juneja breached his undertaking to abstain from alcohol and all other psychoactive (mood altering) substances, unless such drugs were prescribed. The factual particulars alleged are that:
- (a) Mr. Juneja consumed cocaine in the period from January 3, 2019 to April 3, 2019;
 - (b) Mr. Juneja consumed alcohol sometime between March 3, 2019 to April 3, 2019 and on September 14 – 15, 2018; and
 - (c) Mr. Juneja consumed cannabis regularly starting February 25, 2018 without a prescription and also on September 14 -15, 2018 for recreational purposes without a prescription.
41. The allegations about the consumption of cocaine between January 3, 2019 and April 3, 2019 and alcohol between March 3, 2019 to April 3, 2019 revolve around toxicology testing and the evidence of experts. The allegation of use of alcohol on September 14 – 15, 2018 revolves around the evidence of various individuals. The allegations about cannabis use revolve around whether Mr. Juneja needed a prescription for cannabis at the relevant time.

Medical Evidence

42. In support of an application to be made by Mr. Juneja to the LSA to be relieved of his undertakings and have his practice conditions removed, he voluntarily underwent an independent medical exam and submitted to toxicological testing conducted by Dr. C.E. Dr. C.E. is an addiction specialist, medical review officer and occupational physician. The examination by Dr. C.E. was conducted on March 29, 2019 and April 19, 2019.
43. On April 3, 2019 Mr. Juneja provided blood, hair and urine samples for analysis as part of the independent medical examination. Two samples of each were collected. The second samples were collected in case results of the analysis of the first samples were questioned.
44. The toxicology testing came back with the following results:
 - (a) The urine test was positive for cannabis;
 - (b) The hair test was positive for cocaine and cannabis; and
 - (c) The blood test was positive for one of the breakdown products of alcohol.
45. Two different collection sites were used for the toxicology testing. One for collection of the urine sample and another for collection of the hair and blood samples. The testing of the samples was done at three separate laboratories. Dr. C.E. testified that the protocol he followed in having the testing done did not require him to obtain chain of custody documents or to confirm whether the testing sites were accredited. Dr. C.E. testified that a medical review officer signed off on the toxicology reports, assuming full responsibility for the integrity of the testing process, including collection and chain of custody. A medical review officer oversees the testing process from beginning to end, relying on a chain of custody protocol used in the context of forensic toxicological testing. He explained that:
 - (a) The protocol used for testing Mr. Juneja's samples was the same as what he typically uses.
 - (b) The protocol requires that every step in the process be documented.
 - (c) Medical review officers oversee the process and rely on training and a reference manual that detail how to perform their work accurately.
46. Immediately upon being told about the toxicology test results Mr. Juneja sent an email to Dr. C.E. saying he did not agree with them. He denied using cocaine or alcohol.
47. The second set of samples were not tested. Dr. C.E. testified that when a test result is questioned, the request to have the second sample tested usually comes from the donor directly to the testing company. He testified that the testing protocol does not require the examining doctor to have the second sample tested. Dr. C.E. acknowledged that he had the option to request testing of the second samples but did not do so.
48. Mr. Juneja called a bioengineer, Dr. C.B. who testified that the laboratory reports in this case were relatively typical for a medical office providing drug testing to patients. However, in situations where legal or significant administrative action may depend on the

test results additional measures are usually taken, including documenting chain of custody and instrument and protocol validation and clarification.

49. Dr. C.B. was familiar with the Medical Review Officer Manual cited by Dr. C.E. and acknowledged that it was authoritative. He also acknowledged that calibration of equipment was not something a Medical Review Officer was required to do prior to certifying a positive test result.
50. Dr. C.B. did not express the opinion that the test results in relation to Mr. Juneja were not accurate. Only that he could not verify the accuracy of the results without confirmation of calibration of equipment and other practices. His evidence in that regard was succinctly put in an answer he gave in cross examination:

... I want to be clear that I'm not saying that I definitely know something was incorrect, as well as I don't know something was correct.

Non-Medical Evidence

51. In addition to the test results, there was other evidence of alcohol use by Mr. Juneja in 2019 and 2021 while restrictions were in place. During cross-examination, Dr. N.S., Mr. Juneja's general practitioner, testified as follows:

Q. Just to clarify, March 2022, you had some sort of appointment with Mr. Juneja, during which he said he had occasionally used alcohol and edibles sometime in 2021. Is that a fair summary of your evidence?

A. I believe so, yes.

52. Dr. C.K., a psychiatrist, testified that on December 9, 2019 Mr. Juneja told him that he started consuming alcohol in November 2019. Part of Dr. C.K.'s written assessment stated:

...He restarted consuming some alcohol a few weeks ago at the same time as he started having regular dinners with friends every Friday. On those nights, he will drink three or four beers and then stop...

53. Security personnel at the after-hours club and police officers who interacted with Mr. Juneja on September 14-15, 2018 testified about signs of alcohol consumption. The evidence about signs of alcohol consumption by Mr. Juneja that night was somewhat inconsistent. For example, some witnesses observed a strong smell of alcohol emanating from Mr. Juneja and others did not. Some observed bloodshot eyes and others did not.

Position of Mr. Juneja

54. Counsel for Mr. Juneja argued that the Hearing Committee made an error accepting the toxicology test results based on the evidence of Dr. C.B. and that the test result evidence was far from clear, cogent and convincing. He also argued that the evidence of the security personnel and police officers should not have been accepted because:

- it was inconsistent;

- there was an indication that there may have been collusion amongst the witnesses; and
- an adverse inference should have been drawn as a result of the LSA not calling certain witnesses who observed Mr. Juneja on September 14-15, 2018 and witnesses to testify about the accuracy of the toxicology testing.

Position of the LSA

55. Counsel for the LSA argued that the evidence of Dr. C.E. established on a balance of probabilities that the toxicology test results were accurate and that there was no evidence to the contrary. The most Dr. C.B. could say was that the test results may not have been accurate. Counsel for the LSA submitted that the Hearing Committee made a rational and reasonable decision in finding that the test results were valid and accurate.
56. Counsel for the LSA argued that Mr. Juneja should have expressly asked to have the second samples tested and that his failure to do so was inconsistent with his denials of consumption.
57. Counsel for the LSA submitted that there was ample evidence of alcohol consumption on September 14-15, 2018 from five witnesses who had close contact with Mr. Juneja — two security staff and three police officers. He argued that the Hearing Committee's decision to accept that evidence about Mr. Juneja's consumption of alcohol was reasonable and should not be overturned.

Decision of the Appeal Panel

58. The Appeal Panel concludes that the Hearing Committee's decision was reasonable and should not be overturned in relation to the particulars about alcohol and cocaine consumption. The Hearing Committee reasonably concluded on a balance of probabilities that the toxicology test results were accurate. There was evidence that those results may not have been accurate, but there was no evidence that they were not accurate. Without any evidence that the test results were not accurate, and in light of the fact that Mr. Juneja did not ask for the second samples to be tested, the Hearing Committee's decision was reasonable. In addition, Mr. Juneja told both Dr. N.S., his general practitioner and Dr. C.K., a psychiatrist, that he consumed alcohol while prohibited by his undertakings. That evidence was not challenged.
59. For the reasons set out below in the Evidentiary Ruling section of this decision (paragraphs 109 - 121) the Appeal Panel concludes that the Hearing Committee reasonably found that:
 - (a) there was not any inappropriate collusion amongst witnesses;
 - (b) no adverse inferences should be drawn; and
 - (c) the evidence of the security personnel and police officers was credible.
60. In relation to the particular about consumption of cannabis without a prescription, the Appeal Panel concludes that the Hearing Committee finding that Mr. Juneja's use of cannabis after February 25, 2018, breached his undertaking of abstention was not reasonable. Mr. Juneja did consume cannabis after February 25, 2018, without an active

prescription. However, as described below in our analysis at paragraph 67 regarding the candor citations, Mr. Juneja did have a prescription for cannabis from a physician, albeit one which had recently expired. There was no evidence Mr. Juneja was aware of the expiration or knew that use of a drug after the prescription's expiry could be a breach. The undertaking says he was to abstain from drugs unless they "are prescribed by a physician who is fully aware of [his] substance dependence and feels their use is necessary." This language focuses on the physician's judgment that the drug is medically necessary at the time it is prescribed and does not reference anything about the continued use of a validly prescribed drug later. If one is prescribed a drug for an ongoing condition and still has a quantity of the drug left as of the end-date for the prescription, a reasonable person would not ordinarily seek a formal renewal of the prescription in order to consume the remainder of the drug. That assumption regarding the undertaking's scope may be especially understandable in the context here, where the drug had recently been legalized by Act of Parliament and so became accessible without the necessity of a prescription. We observe that the commentary to the relevant provision of the Code, section 7.2-14, says that undertakings should be "absolutely unambiguous in their terms." We cannot say that this undertaking was sufficiently clear and unambiguous to forbid the use of prescribed marijuana in these circumstances. (We would also note, though it is not strictly speaking part of the citation for breaching the undertaking, that Mr. Juneja's actions would not bring the profession into disrepute and rise to the level of conduct deserving of sanction). For all these reasons we find it was not reasonable for the Hearing Committee to conclude that the continued use of prescribed cannabis was a breach of the abstention undertaking.

Citation 4: Failure to be Candid

61. The particulars of this citation are as follows:

- (a) Mr. Juneja, in a quarterly report to the LSA dated March 15, 2018, stated that he had a prescription for medical cannabis, which was not true.
- (b) During an interview with a LSA investigator on July 9, 2019, Mr. Juneja stated that he had not used alcohol since 2014 and that he had not consumed cocaine since 2009, both statements being untrue.
- (c) During another interview with an LSA investigator on November 19, 2019 Mr. Juneja again stated that he had not used alcohol since 2014, which was not true.
- (d) In Mr. Juneja's response letter to the LSA dated March 10, 2020, Mr. Juneja denied using alcohol or any other psychoactive substance, other than cannabis with a medical prescription, which was not true.

Decision of the Hearing Committee

62. The Hearing Committee concluded that Mr. Juneja failed to be candid in relation of all four of the particulars. The Hearing Committee concluded that Mr. Juneja's denial of the use of the alcohol and cocaine was unsupported by the evidence — in particular the toxicology testing. In relation to Mr. Juneja telling the LSA that he had a prescription for cannabis, the Hearing Committee concluded that Mr. Juneja's statement that he had a prescription was "at best a half-truth". They made this conclusion on the basis that the prescription had expired shortly before Mr. Juneja's March 15, 2018 report to the LSA.

63. The Hearing Committee quoted from *Law Society of Alberta v. Sharma*, 2021 ABLS 2 regarding the definition of candour and concluded in paragraphs 123-126 of its Merits Decision that:

- Candour requires disclosure of all salient and important information.
- Mr. Juneja's untrue statements to the LSA investigator and in his March 10, 2020 letter to the LSA show a lack of candour.
- Mr. Juneja's lack of candour amounted to a breach of section 7.1-1 of the Code which states:

7.1-1 A lawyer must reply promptly and completely to any communications from the Society.

- A lack of candour cannot in any instance be compatible with the public interest or be in the interest of the LSA and its members, and as such Mr. Juneja's conduct was deserving of sanction.

Submissions on behalf of Mr. Juneja

64. Mr. Juneja relies on his denials of using alcohol and cocaine. He also relies on his arguments about the reliability of the toxicology test results and the eyewitness evidence about signs of consumption of alcohol and cocaine on September 14-15, 2018. In relation to the consumption of cannabis without a prescription, counsel for Mr. Juneja argued that the Hearing Committee was mistaken with respect to the requirements of the prescription marijuana regime. In particular, he pointed out that:

- The federal government legalized possession of marijuana effective October 17, 2018; and
- Mr. Juneja did not renew his prescription for marijuana after February 25, 2018 because marijuana was being legalized and prior to February 25, 2018 he had legally obtained a sufficient supply under the prescription that he believed would last until legalization.

Submissions on behalf of the LSA

65. Counsel for the LSA made the following submissions in relation to each of the four alleged particulars:

- (a) In a quarterly report to the LSA dated March 15, 2018, Mr. Juneja expressly stated that he had a prescription for the use of medicinal marijuana. Mr. Juneja admitted at the hearing that the statement was false because the prescription had expired a month earlier.
- (b) Mr. Juneja admitted that he told an LSA investigator on July 9, 2019 that he had not used alcohol since 2014 or cocaine since 2009 and the toxicology test results show that was not true.

- (c) Mr. Juneja admitted that he told an LSA investigator on November 19, 2019 that he had not used alcohol since 2014 and the toxicology test results show that was not true.
- (d) In a response letter to the LSA dated March 10, 2020, Mr. Juneja stated that he had not used alcohol or any other psychoactive substances, except cannabis for which he had a prescription. The toxicology test results show that statement was not true in relation to alcohol or cocaine. In relation to cannabis, the statement was untrue because Mr. Juneja's prescription had expired on February 25, 2018.

Decision of the Appeal Panel

66. The Appeal Panel concludes that the Hearing Committee's decision was reasonable and should not be overturned in relation to particulars (b), (c) and (d). The Hearing Committee reasonably concluded that Mr. Juneja's statements about not using alcohol or cocaine were not true. That conclusion was based on the Hearing Committee's reasonable acceptance of the toxicology test results and other evidence of Mr. Juneja's use of alcohol.
67. In relation to particular (a), that Mr. Juneja was not candid when he stated in his March 15, 2018 report to the LSA that he had a prescription for cannabis, the Appeal Panel concludes that the Hearing Committee finding of guilt was not reasonable. If a Conduct Committee of the LSA considered this particular in isolation a citation would not have been issued. The Appeal Panel has reached this conclusion as a result of the following mitigating circumstances:
- Mr. Juneja had a prescription for cannabis that had expired a month earlier. There was no evidence that Mr. Juneja had noticed the expiry of the prescription and intentionally made a misrepresentation to the LSA.
 - Mr. Juneja's 5-page March 15, 2018 quarterly report to the LSA was a word-for-word copy of his December 15, 2017 quarterly report. There was no evidence directly on this issue but we strongly suspect that Mr. Juneja thought nothing had changed so simply repeated his previous report.
 - Parliament had passed legislation legalizing the use of cannabis that was coming into effect. This made the need for a prescription for cannabis less significant.

Mr. Juneja's statement that he had a prescription for cannabis in his March 15, 2018 report to the LSA may have been technically inaccurate, but considering the circumstances as a whole, it did not amount to a lack of candour deserving of sanction.

Citation 5: Discreditable Conduct

68. The particulars of this citation are that Mr. Juneja conducted himself in a manner that brought discredit to the profession as follows:
- (a) On September 15, 2018, Mr. Juneja, while at an after-hours club in Edmonton, engaged in a physical altercation with the security staff during which he swore at them, threatened to kill them, attempted to punch them and did punch one of them;

(b) On September 15, 2018, while in custody of the Edmonton Police Service, Mr. Juneja resisted attempts to place him into a holding cell, resulting in a physical altercation with the officers during which Mr. Juneja swore at the officers and threatened to kill them; and

(c) Mr. Juneja procured and consumed an illegal substance, namely cannabis:

- On September 14-15, 2018, which was illegal at that time in any form for a non-medical purpose; and
- Between October 17, 2018 and October 17, 2019, in the form of edibles, which were illegal during that time period.

Facts

69. This citation concerns events that occurred in the early hours of a Sunday morning at an after-hours club and a police station. An altercation took place between Mr. Juneja and the security staff at the after-hours club, which resulted in the police being called. Mr. Juneja was arrested and taken to a police station, where a further altercation took place between Mr. Juneja and various police officers. The altercations at the after-hours club and the police station were partially caught on camera.
70. The LSA called six police officers and three security staff as witnesses. In addition, the Hearing Committee reviewed video footage (without audio) from inside the club, the area outside and behind the club and inside the police station.
71. Mr. Juneja was cooperating with security staff after being asked to leave the club. However, as he was being escorted out the back of the club, Mr. Juneja initiated an altercation with the security staff. As a result of the altercation, the police were called. Mr. Juneja was arrested by the police because there was a warrant for his arrest related to unpaid fines.
72. When Mr. Juneja was in custody at the police station, he repeatedly swore at police officers, challenged them to fight, and told them he was going to kill them. He was physically resistive to the police.
73. Mr. Juneja was charged with causing a disturbance and two other criminal offences. On November 14, 2019, he pleaded guilty and received an absolute discharge in respect of the charge of causing a disturbance. The other two charges were withdrawn. Mr. Juneja admitted at Provincial Court that he taunted security staff at the after-hours club and challenged them to fight.

Decision of the Hearing Committee

74. The Hearing Committee concluded that the evidence of the police officers and the security staff at the after-hours club was credible. In paragraphs 177 and 178 of the Merits Decision the Hearing Committee summarized its conclusions on this citation as follows:

Based on the evidence, the Committee finds as follows:

- (a) On September 15, 2018 Mr. Juneja, while at an after-hours club, instigated and engaged in a physical altercation with security staff. During this altercation Mr. Juneja swore at the staff, threatened to harm them, used homophobic slurs and punched one of them several times.
- (b) While in custody at the police station on September 15, 2021, Mr. Juneja resisted attempts to place him in a holding cell, resulting in a physical altercation with police officers. During this altercation Mr. Juneja swore repeatedly at the officers and threatened to harm at least one of the officers.
- (c) By his own admission, at some point during the evening of September 14, 2018, or the early hours of September 15, 2018, Mr. Juneja consumed cannabis. At this particular date cannabis was not yet legalized and there was no medical purpose for the consumption of the cannabis.
- (d) Mr. Juneja has admitted to consuming cannabis during the period of October 17, 2018 to October 17, 2019 in the form of edibles.

The Committee therefore finds that Mr. Juneja has conducted himself in a manner that has brought discredit to the profession contrary to section 2.1-1 of the Code and as such that conduct is deserving of sanction.

Submissions on behalf of Mr. Juneja

- 75. Counsel for Mr. Juneja submitted that the Hearing Committee made errors in its findings of fact by not drawing adverse inferences as a result of LSA not calling certain witnesses. He argued that an adverse interference should have been drawn in relation to LSA's failure to call witnesses. In particular:
 - W.L., one of the security personnel at the after-hours club;
 - Staff Sergeant D., one of the police officers who observed Mr. Juneja at the police station; and
 - Witnesses to establish the accuracy of the toxicology testing.
- 76. It was argued that these witnesses could have provided important evidence and that no explanation was provided by the LSA for not calling them.
- 77. Counsel for Mr. Juneja also argued that the Hearing Committee erred by not finding that there was collusion, at least a form of unintentional collusion, that undermined the credibility of the evidence of security personnel from the after-hours club.
- 78. It was also submitted that Mr. Juneja's conduct was not related to being a lawyer and was relatively minor. In particular, it was submitted that:
 - Mr. Juneja's conduct on September 14-15, 2018 had no relevance to any client or member of the public;
 - The more serious criminal charges of uttering threats and resisting arrest were withdrawn and Mr. Juneja was granted an absolute discharge with respect to the

admitted criminal conduct of causing a disturbance by fighting. A relatively minor offence; and

- The criminal justice system considered the conduct on September 14-15, 2018 to be relatively minor and the LSA should defer to that process and similarly treat those events as minor.

79. It was argued that Mr. Juneja's use of cannabis was not inappropriate during the relevant time periods. Mr. Juneja legally obtained a supply of cannabis before his prescription ended on February 25, 2018 and he thought it would last until legalization in October, 2018. Accordingly, Mr. Juneja did not do anything illegal by using cannabis at that time. In addition, it was submitted that he had advised LSA Practice Management that he was using cannabis after his prescription had expired.

Submissions on behalf of LSA

80. In relation to the altercation at the after-hours club, counsel for the LSA referred to evidence of Mr. Juneja, the security staff and the videos supporting the Hearing Committee's conclusion that Mr. Juneja instigated the fight, punched one of the security personnel several times and threatened the security personnel.

81. Similarly, in relation to the altercation at the police station, counsel for the LSA referred to the video evidence and the viva voce evidence of five police officers, one peace officer and Mr. Juneja. He submitted that all of that evidence supported the Hearing Committee's conclusion that Mr. Juneja resisted attempts to put him in a cell which resulted in a physical altercation with police and that Mr. Juneja repeatedly swore at the officers and threatened to harm at least one of them.

82. In relation to Mr. Juneja's arguments that this conduct was not related to any clients or the practice of law, counsel for the LSA submitted that the Hearing Committee referred to appropriate cases and correctly concluded in paragraph 174 of the Merits Decision that the conduct of Mr. Juneja was deserving of sanction because:

- (a) His conduct would reasonably tend to harm the standing or reputation of the profession;
- (b) A client would find their trust in the profession impaired by his conduct; and
- (c) His conduct reflects on the characteristics required to be a competent and ethical member of the profession.

83. In relation to the allegations about procuring and consuming cannabis, counsel for the LSA submitted that on September 14-15, 2018 and between October 17, 2018 and October 17, 2019:

- Cannabis was illegal;
- Mr. Juneja did not have a valid prescription for cannabis;
- He admitted consuming cannabis; and
- Consuming cannabis illegally brought discredit to the profession.

84. Counsel for the LSA submitted that the Hearing Committee's Merits Decision provided an internally coherent and rational chain of analysis in relation to the facts and law and that the finding of guilt in relation to this citation was reasonable and correct.

Decision of the Appeal Panel

85. Particulars (a) and (b) relate to Mr. Juneja's behaviour at the after-hours club and the police station.
86. Particulars (c) and (d) of the citation relate to Mr. Juneja procuring and consuming cannabis on September 14–15, 2018 and between October 17, 2018 and October 17, 2019 which was illegal during that period. All of this conduct on the part of Mr. Juneja was private conduct, not related to his law practice or any clients.
87. The Appeal Panel concludes that the Hearing Committee properly applied section 49 of the *Act* and the applicable parts of the Code. Section 49 of the *Act* states:

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

(a) Is compatible with the best interests of the public or 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.

88. Section 2.1-1 of the Code states:

A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

89. The commentary of the Code related to section 2.1-1 states:

(a) Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

(b) Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

(c) Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the

profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

- (d) Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

90. The Hearing Committee relied on *Strom v. Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 in relation to whether there was a sufficient nexus between Mr. Juneja's off duty conduct and the profession. The *Strom* case outlined factors to be assessed in determining whether there is sufficient connection. In paragraphs 171 and 172 of its Merit Decision the Hearing Committee summarized the factors to be considered when assessing the nexus between conduct and the profession and analyzed those factors in relation to Mr. Juneja's conduct. Paragraphs 171 and 172 of the Merits Decision state:

The factors listed by the court in the *Strom* case (which we do not take as being exhaustive) require that we engage in a contextual analysis to determine if private conduct constitutes conduct deserving of sanction. In the framework of section 49(1) of the Act, we would summarize the relevant circumstances and factors (recognizing that there is some overlap of factors) as follows:

- I Is the conduct incompatible with the best interests of the public?
 - (a) Does the misconduct impair the ability of the individual to perform as a member of the profession?
 - (b) How closely connected is the misconduct to the practice of the profession?
- II Does the misconduct engage the broader public interest?
 - (c) Does the conduct negatively reflect on the characteristics required to be a competent and ethical member of the profession?
 - (d) Does the conduct tend to harm the standing or reputation of the legal profession?
 - (e) What is the nature of the profession and what is the nature of the misconduct?
 - (f) Is the conduct more reprehensible by a member of the profession in the case of others?
 - (g) Was the individual identified as a member of the profession? Did they purport to act as a member of the profession?

- (h) Would the misconduct impair a client's trust in the profession?

In considering these factors and applying a contextual analysis the Committee is of the view that the conduct of Mr. Juneja falls within conduct that is deserving of sanction for the following reasons:

- (a) 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.
- (b) A client would correspondingly find their trust in the profession impaired by the behaviour of Mr. Juneja.
- (c) Mr. Juneja went out of his way to tell everyone that he was a lawyer, which objectively paints a more negative picture of his conduct.
- (d) The behaviour also reflects to some degree on the characteristics required to be a competent and ethical member of the profession. Competent and professional lawyers simply do not engage in early morning brawls at night clubs, and even more unbelievably do not become engaged in a fight with the police.

91. The Appeal Panel concludes that the Hearing Committee's finding that Mr. Juneja was guilty of conduct that brought discredit to the profession and was deserving of sanction, was reasonable in relation to his conduct at the after-hours club and the police station (particulars (a) and (b)). Engaging in night club brawls with security personnel and physical altercations with police officers is conduct that is simply unacceptable for a lawyer. Engaging in that sort of conduct damages the reputation of the legal profession. It causes the public to lose respect for and confidence in the profession. A failure of the LSA to condemn such inappropriate behaviour would cause the public to further lose confidence in and disrespect the profession.
92. For the reasons set out in the Evidentiary Ruling section of this decision (paragraphs 109 – 121), the Appeal Panel concludes that the Hearing Committee did not err in finding that the evidence of the security personnel and police officers was credible, that there was not any inappropriate collusion and that no adverse influences should be drawn.
93. The Appeal Panel concludes that the Hearing Committee finding that Mr. Juneja's cannabis use (particular (c)) brought discredit to the profession was not reasonable. The Hearing Committee finding on particular (c) of the citation did not explain why the consumption of marijuana after legalization had passed Parliament met the test for determining whether private conduct is deserving of sanction. The Hearing Committee did not apply the *Strom* factors to particular (c) relating to Mr. Juneja's use of cannabis.
94. There was no evidence that the marijuana consumption during the identified time period affected any clients, or that it was connected to Mr. Juneja's practice. Use of marijuana after Parliament had legalized it but before that law came into force may not negatively reflect on the characteristics required of a competent and ethical member of the bar. Given the widespread use of marijuana, and the fact that Bill C-42 had received Royal

Assent, it is not clear that consumption at the relevant times would harm the standing of the profession in the mind of a right-thinking member of the public. No evidence was presented that it actually did.

95. In these unique circumstances, where the alleged conduct occurred after Bill C-42 had received Royal Assent and before it came into force, and in the absence of a fulsome explanation in the Merits Decision on this point, the Appeal Panel cannot conclude that Mr. Juneja's use of marijuana met the test in section 49 of the *Act*.
96. To summarize in relation to citation 5, the Appeal Committee finds that the finding of guilt on the citation was reasonable in relation to particulars (a) and (b) but not in relation to particular (c). Because two of the particulars were proven, the finding of guilt on citation 5 is not overturned.

Citation 6: Lack of Candour

97. Citation 6 alleges that Mr. Juneja failed to be candid when informing the LSA about being charged with criminal offences. It is alleged that Mr. Juneja failed to inform the LSA that he was the instigator of the altercation with the after-hours club staff, and that he failed to advise the LSA about the altercation with the police officers.

Facts

98. Mr. Juneja wrote a letter dated October 28, 2018 to the LSA to satisfy his duty to report that he had been charged with criminal offences. After receiving the letter, the LSA sent a letter dated October 30, 2018 to Mr. Juneja advising him that he was required to describe the circumstances of the events that led to the charges. Mr. Juneja responded with a letter dated November 30, 2018. In that letter he pointed out that he had not yet received disclosure of the particulars being alleged in relation to the criminal charges. He then described the events at the after-hours club as follows:

In regards to the incident itself, I was at a dance club called "Y-afterhours" this was a nondrinking establishment and I was not consuming alcohol. I was approached by a member of security who asked me to leave. He stated he was asking me to leave as a woman claimed she had been touched inappropriately. I told him that I had done no such thing, but would leave at his request. Once we got to the exit, the security member who escorted me to the exit commented on how I should not be touching girls. I again said I did no such thing. At this time I was surrounded by three security personnel, who began closing in on me. I was attacked and fought back in self defence. I was in the course of defending myself when the police arrived.

99. In Mr. Juneja's November 30, 2018 letter to the LSA he described the events involving the police as follows:

The police upon arrival separated the fight, and asked for identification, which I provided. The police officers checked my name on a police database and realized that I had an outstanding warrant out of Edson for traffic fines. This warrant stems from a speeding ticket, that I resolved in Edson but forgot to pay. I was placed under arrest for this warrant, and had to be transported to the downtown detachment to have the warrant processed. I fully understood this process and completely cooperated with it.

There were two officers involved in transporting me to the downtown detachment; one was a younger officer the other was an older officer. The older officer started asking me why I was going around touching girls in a club. I told him repeatedly, that I did no such thing. I would never engage in that type of activity. He persisted and an argument escalated. I definitely raised my voice as did he, and insults were exchanged. I was released hours later when the Edmonton Police Service received the warrants from the R.C.M.P. detachment in Edson, and I paid the ticket.

100. Mr. Juneja's November 30, 2018 letter provided a description of the circumstances leading to the charges, but the description was not entirely accurate. His letter stated that he was attacked by security personnel at the after-hours club when, in fact, he was the instigator, and he failed to mention the physical altercations with police.

Decision of the Hearing Committee

101. The Hearing Committee set out its conclusion in relation to this citation in paragraphs 187 and 188 of the Merits Decision as follows:

The Hearing Committee finds that Mr. Juneja lacked candour when he:

- (a) informed the LSA about being criminally charged, but failed to advise that he had a physical altercation with the police;
- (b) failed to inform the LSA that he was the instigator of the altercation with the after-hours club staff; and
- (c) failed to inform the LSA about the altercations with the police officers.

Section 7.1-1 of the Code states: A lawyer must reply promptly and completely to any communication from the LSA. The failure to be candid with the LSA is a breach of section 7.1-1. In addition, lack of candour is not compatible with the best interest of the members of the LSA and is deserving of sanction.

Submissions on behalf of Mr. Juneja

102. It was argued on behalf of Mr. Juneja that the findings of a lack of candour are "absurd". It was submitted that Mr. Juneja self-reported the criminal charges to the LSA, and when the LSA asked for more information, he identified the charges, the section numbers and provided a brief description of what he believed the charges related to. Mr. Juneja indicated at the time that he had not received disclosure concerning the charges, and therefore he was not aware of precisely what was alleged.
103. It was argued that Mr. Juneja made it clear to the LSA that he was not aware of the precise allegations and therefore he was not attempting to mislead the LSA. It was acknowledged that it was possible for Mr. Juneja to have been more detailed in his response to the LSA, but submitted that his response was sufficiently candid. It was argued that the information provided by Mr. Juneja was factually accurate and that no further details or explanations were necessary.

Submissions on behalf of the LSA

104. Counsel for the LSA reviewed the facts related to the citation and the Hearing Committee's analysis of those facts in the Merits Decision. He submitted that the Hearing Committee provided an internally coherent and rational chain of analysis that was justified in relation to the facts and law.
105. Counsel for the LSA reinforced that Mr. Juneja's response letter mischaracterized what happened at the after-hours club by saying that security staff instigated the fight and not Mr. Juneja. He also submitted that Mr. Juneja's letter failed to mention the physical altercation with the police officers and falsely stated that he "completely cooperated" with the police which was not true based on the video evidence.

Decision of the Appeal Panel

106. The Appeal Panel finds that the Hearing Committee's ruling that Mr. Juneja was guilty of this citation was not reasonable. Mr. Juneja was asked by the LSA to provide a written report outlining the circumstances that led to the charges against him. Reporting the circumstances leading to a criminal charge does not require a lawyer to provide every detail of the events or to admit engaging in criminal behavior. A lawyer is only required to provide sufficient information for the LSA to understand the nature of the criminal charges and the general circumstances leading to those charges.
107. At the time of Mr. Juneja's November 30, 2018 letter providing the explanation of the circumstances leading to the charges he had not received disclosure from the Crown. He had not seen the video from the police station or the after-hours club. In addition, he was intoxicated at the time of the events, so his memory was likely at least somewhat impaired.
108. Mr. Juneja's description of the circumstances leading to the criminal charges was not completely accurate but the inaccuracies were not sufficient to constitute sanctionable conduct. If this citation was looked at in isolation, a reasonable Hearing Committee would not find the failure to be completely accurate in reporting the circumstances leading to the criminal charges to constitute a lack of candour deserving of sanction. Therefore, the finding of guilt on this citation is overturned.

EVIDENTIARY ISSUES

109. Counsel for Mr. Juneja raised issues related to evidentiary decisions of the Hearing Committee. He argued that the Hearing Committee erred by:
 - Failing to draw adverse inferences as a result of the LSA not calling certain witnesses.
 - Failing to conclude that there was collusion amongst certain witnesses called by the LSA.
 - Failing to make proper findings of credibility.

Adverse Inference

110. Counsel for Mr. Juneja submitted that an adverse inference should have been drawn as a result of the LSA's failure to call witnesses. In particular:

- W.L., one of the security guards at the after-hours club who was present throughout the entire occurrence at the after-hours club;
- Staff Sergeant D., who was in close proximity to Mr. Juneja while he was in police custody; and
- A witness or witnesses to address the accuracy and reliability of the toxicology test results.

111. Counsel for Mr. Juneja quoted the seminal case of *Murray v. Saskatoon (City)*, 1951 CanLII 202 (SK CA) where the court reviewed the adverse inference principle, as follows:

The subject is dealt with at length by the learned author in Wigmore on Evidence, 3rd ed., vol. II, pp. 162 et seq. On p. 162 it is stated in part:

The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted.

The party affected by the inference may, of course, explain it away by showing circumstances which prevent the production of the witness; but where the failure to produce the witness is not explained, the inference may be drawn that the unproduced evidence would be contrary to the party's case or at least would not support it. In the pages in Wigmore on Evidence following the above quotation many authorities are referred to which indicate that in the Courts of the United States the rule is of wide applications.

112. Counsel for the LSA countered the arguments on behalf of Mr. Juneja, submitting that:

- Explanations were provided for not calling W.L. and Staff Sergeant D.; and
- There is no propriety in a witness. The LSA did not have any control over the witnesses, and they could have been called by Mr. Juneja.

113. The Hearing Committee reviewed the law on when to draw an adverse inference. The Merits Decision, at paragraph 173, quoted from *Singh v. Reddy*, 2019 BCCA 79, as follows:

As noted in *Rohl*, it is now generally accepted that court is not *required* as a matter of law to draw an adverse inference where a party fails to call a witness. Thus in *Witnesses* (looseleaf), A.W. Mewett and P.J. Sankoff write:

A considerable number of cases reinforce the view that there is no such thing as a “mandatory adverse inference” to be drawn where a party fails to call a witness. Rather, the question of whether to make such an inference seems to depend upon specific circumstances, in particular whether:

- There is a legitimate explanation for the failure to call the witness;
- The witness is within the “exclusive control” of the party, and is not “equally available to both parties”;
- The witness has material evidence to provide; and
- The witness is the only person or the best person who can provide the evidence.

114. The Hearing Committee identified the correct legal test for drawing an adverse interference and made a reasonable decision in not drawing any adverse interferences. The Hearing Committee correctly noted that the witnesses were not in the exclusive control of the LSA and were not the only persons or even the best persons to provide evidence. In addition, the LSA did provide explanations for why the witnesses were not called.

Collusion

115. Counsel for Mr. Juneja argued that there was evidence of collusion among security staff at the after-hours club and that the Hearing Committee erred by failing to conclude that collusion undermined the reliability of the security staff evidence.
116. There was evidence that the security staff reviewed each other’s written statements about the events in question and that one of the witnesses was mistaken about a statement referencing white powder on Mr. Juneja’s upper lip. It is correct that reviewing the written statement of another witness can undermine the reliability of the account of a witness by deliberate collusion or by unintentionally influencing their account of events. However, in this case there was evidence of several police officers and several security personnel that the Hearing Committee found credible. Evidence of one witness reviewing another witness’s statement is not sufficient to undermine the credibility of all of the eyewitness evidence.
117. The Hearing Committee did not make an error by failing to discount the evidence on the basis of collusion. The Hearing Committee observed and appropriately considered the credibility of the security staff. There was not sufficient evidence of collusion to allow the Appeal Panel to set aside the findings of credibility.

Credibility

118. Counsel for Mr. Juneja argued that the Hearing Committee made errors in making credibility findings and by failing to provide a sufficiently meaningful explanation of its credibility findings.
119. In Mr. Juneja's counsel's written submissions, he quoted at length an analysis of the factors impacting the proper assessment of credibility in an administrative proceeding from *Calgary (City) v Calgary Civic Employees (Canadian Union of Public Employees, Local 37)*, 2014 CanLII 68209 (AB GAA). That case provides an excellent analysis of the factors that an administrative tribunal should consider when assessing credibility. The specific factors identified in that case by Arbitrator James Casey K.C. were as follows:

...In assessing the credibility of witnesses, an administrative tribunal or other trier of fact should consider the following factors:

- a) Demeanour of Witness: Does the witness appear to be telling the truth? Is the witness evasive and unwilling to answer tough questions?
 - b) Memory: Does the witness appear to have a clear memory of events? Was the witness able to refresh their memory from a written statement? Does the witness suffer from selective memory? What are the witness' powers of observation? Is the witness able to clearly describe what they saw and heard? How much time has passed since the events? Does this affect the witness' memory?
 - c) Plausibility: Is the witness' version of events plausible or probable? Using the collective common sense of the tribunal, does the story place too great a strain upon one's sense of the realities of life? (*Faryna v. Chorney* at p. 358).
 - d) Internal Consistency: Is the witness' testimony internally consistent? Or did the witness change their evidence during testimony? Is the evidence consistent or inconsistent with statements given before the hearing?
 - e) External Consistency: Is the witness' testimony consistent with facts established by other witnesses or through documentary evidence? Or does independent credible evidence contradict the testimony of the witness?
 - f) Motivation: Is the witness motivated to remember or recount events in a certain way? Is the witness taking sides in a dispute without taking appropriate care to tell the truth? Is the witness biased due to the influences of friendship and kinship? Or is the witness disinterested without any particular "axe to grind"?
 - g) Ability to Perceive: Was the witness in a position to observe the event? Was the witness paying attention? Is the witness observant?
120. When making its credibility findings, the Hearing Committee carefully explained the basis for those findings. In paragraph 159 of the Merits Decision the Hearing Committee found

that where a conflict existed between the evidence of security personnel at the after-hours club and Mr. Juneja, the Hearing Committee accepted the evidence of the security staff. In that paragraph the Hearing Committee explained that it considered several factors in making its credibility finding including honesty, memory, suggestibility, communication ability, compatibility, demeanour, consistency, plausibility (sense) and reputation.

121. The factors outlined in the Merits Decision are consistent with the factors outlined by Arbitrator Casey in the case quoted above. The Appeal Panel finds that the Hearing Committee outlined the appropriate factors to consider when assessing credibility, thoroughly explained the reasons for their credibility findings and made reasonable credibility findings.

SANCTION

Hearing Committee Decision

122. The Hearing Committee ordered that Mr. Juneja be suspended for a period of 15 months and that the suspension take effect 14 days from the date of the issuance of the Sanction Decision.

Position on behalf of Mr. Juneja

123. It was submitted that the Hearing Committee erred by imposing a sanction that was disproportionate to the factually proven unprofessional conduct. It was argued that the Hearing Committee:

- Erred in concluding that Mr. Juneja was ungovernable;
- Mischaracterized the severity of Mr. Juneja's conduct;
- Overemphasised Mr. Juneja's disciplinary record;
- Understated the mitigating factors;
- Ignored the range of sanctions imposed for similar conduct; and
- Did not provide coherent reasoning in support of the very serious sanction.

124. Counsel for Mr. Juneja emphasised the following mitigating factors:

- Mr. Juneja's conduct was not related to his law practice and did not impact any clients;
- The events on September 14-15, 2018 occurred in the middle of the night in a commercial area and the inside of the police station so they were unlikely to impact public confidence in the legal profession;

- The events in question occurred between four and five years before sanctioning and there was no information to suggest that the offending behaviour had re-occurred.
 - Mr. Juneja's psychiatrist and psychologist identified a causal connection between his previous psychological condition and the offending behaviour;
 - Mr. Juneja's alcoholism was in remission, and his addictions were controllable;
 - There were several reference letters indicating that Mr. Juneja was a good lawyer and his addictions and alcoholism were not impacting his practice; and
 - Mr. Juneja incurred substantial legal costs for defence counsel and was required to take a lot of time away from his practice to respond to the citations and prepare for the hearings.
125. It was argued that the Hearing Committee erred in finding Mr. Juneja ungovernable because Mr. Juneja properly and respectfully participated in the LSA proceedings and because most of the factors related to ungovernability do not apply to him.
126. It was submitted that Mr. Juneja should not have been suspended and that an appropriate sanction was a reprimand or a minor fine.

Position on behalf of LSA

127. The overview of LSA's position on sanctioning is as follows:
- Having found that Mr. Juneja was ungovernable, the Hearing Committee erred by failing to disbar him;
 - The Hearing Committee failed to weigh the aggravating circumstances and mitigating circumstances appropriately, including the negative impact of Mr. Juneja's conduct on the reputation of the profession; and
 - A 15-month suspension is an unreasonably light sanction because it does not comport with the seriousness of the findings of misconduct and Mr. Juneja's prior history of misconduct.
128. Counsel for the LSA submitted that the Appeal Panel should vary the sanction and disbar Mr. Juneja or alternatively, increase the length of his suspension to at least two years.

Standard of Review

129. The standard of review in relation to sanction is reasonableness, as set out in the Yee case that is quoted in paragraph 16 of this decision. The application of that standard of review to a sanction decision by an administrative body was summarized in paragraph 51 of *Sharma* as follows:

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.¹ 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.²

Appeal Panel Decision

130. The Appeal Panel concludes that the Hearing Committee's ruling on sanction was not within a reasonable range of sanction for Mr. Juneja's misconduct. It was excessive and outside the acceptable range of sanction for the reasons explained below.
131. The lengthy suspension imposed by the Hearing Committee was based in large part on their incorrect finding that Mr. Juneja was ungovernable. The Hearing Committee identified the proper test for ungovernability and the proper factors to consider, but their conclusion that Mr. Juneja is ungovernable was not reasonable based on the evidence.
132. The Hearing Committee reviewed the case law relating to ungovernability including *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313, *Lessing* (Re), 2022 LSBC 7 and *Law Society of Upper Canada v. Shifman*, 2014 ONLSTA 21 and adopted the following test and factors for a finding of ungovernability in paragraph 28 of the Sanction Decision:

Following the *Alsaadi* decision, and with an adoption of the *Lessing* and *Shifman* factors, this Committee adopts the following test and factors for a finding of ungovernability:

Has the member failed to accept the authority of the LSA, has the member intimated that he or she is not bound by the rules and standards of the profession or has the member shown a wanton disregard and disrespect for LSA regulatory processes as maybe evidenced by the following, non-exclusive, factors:

- (a) Has the member shown a consistent and repetitive failure to respond to the LSA's inquiries.
- (b) Does the member have a discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.
- (c) Does the member have a history of breaches of undertaking without apparent regard for the consequences of such behaviour.
- (d) Has the member shown an element of neglect of duties and obligations to the LSA with respect to trust account reporting and records.

¹ *R. v. Darnell*, 2014 ABCA 235 paragraph 11, as cited in the LSA's Lawyer Conduct Appeals Guideline June 11, 2016.

² LSA Pre-Hearing and Hearing Guideline, pages 4 and 5 and authorities cited therein including *R. v. Shropshire* 1995 CanLii 47 (SCC).

- (e) Are some elements of any misleading behaviour directed to a client, the courts, other counsel and/or the LSA.
- (f) Has there been a failure or refusal by the member to attend at the discipline hearing convened to consider the offending behaviours.
- (g) Does the member have a record or history of practising law while under suspension.

133. Of the seven factors listed by the Hearing Committee, four of them – (a), (d), (f), and (g) – do not apply to Mr. Juneja. Mr. Juneja:

- Has not shown a consistent and repetitive failure to respond to the LSA;
- Has not failed to comply with trust reporting requirements;
- Has not failed to attend discipline proceedings; and
- Does not have a record of practicing law while suspended.

134. Three of the factors listed by the Hearing Committee do apply to Mr. Juneja – (b), (c), and (e) – but those factors are mostly quite minor in relation to Mr. Juneja:

- He does have a disciplinary history, but his prior misconduct was several years ago;
- His breaches of practice restrictions were relatively minor and done at the request of his LSA appointed supervisor;
- His breach of undertaking not to consume alcohol or drugs was somewhat isolated. There was evidence that his alcoholism was in remission, his drug use under control and that they were not impacting his law practice; and
- His failure to be fully forthright and candid with the LSA and misleading of other counsel are serious but Mr. Juneja's failures in this regard did not impact any clients or cause any harm.

135. An objective application of the ungovernability factors to Mr. Juneja does not justify a finding of ungovernability. The evidence does not support a conclusion that Mr. Juneja has:

- failed to accept the authority of the LSA;
- intimated that he is not bound by the rules and standards of the profession; and
- disrespected the LSA regulatory process.

Therefore, the Hearing Committee's finding that Mr. Juneja was ungovernable was not reasonable.

136. The Hearing Committee's erroneous finding of ungovernability led it to make an unreasonably harsh decision regarding sanction. There is no doubt that Mr. Juneja's misconduct was serious and deserving of a serious sanction including a suspension. However, in the circumstances, a 15-month suspension is too long and not reasonable. Since we have reversed the Hearing Committee finding on citation 6 and overturned particulars of several other citations which affected the sanction, we must re-consider the sanction imposed.
137. The Hearing Committee properly outlined in paragraphs 35-37 of the Sanction Decision the following sanctioning principles:
- The fundamental sanctioning principles are protection of the public from professional misconduct and protection of the public's confidence in the integrity of the profession;
 - Additional considerations when sanctioning include specific deterrence of the lawyer, general deterrence, and denunciation of the misconduct; and
 - Sanctions must be purposeful, measured, proportionate and reasonable.
138. The Alberta Court of Appeal recently confirmed that the sanctioning principles outlined by the Hearing Committee are appropriate for professional disciplinary matters in *Charkhandeh*. However, the court in *Charkhandeh* went on to state that sanctioning must be done proportionally and with restraint. In paragraph 95 of *Charkhandeh*, the Court of Appeal stated:
- ... In accordance with the principle of restraint, the most lenient sanction that would serve the legitimate purposes of the sanctioning process should be selected.** Specifically, even though cancellation of registration might serve the secondary purposes of denunciation, deterrence and protection of the reputation of the profession, the Hearing Tribunal must also consider whether any lesser sanction would have substantially the same impact. Where there is no measurable risk to the public, the sanction should also not be so onerous as to preclude rehabilitation of the professional, or unnecessarily prevent a trained professional from providing a valuable service to the public, including his other patients.
139. In considering the length of suspension, in addition to inappropriately considering Mr. Juneja to be ungovernable, the Hearing Committee failed to properly consider all of the mitigating circumstances. In paragraph 41 of the Sanction Decision, the Hearing Committee recognized the following mitigating considerations:
- Mr. Juneja has not attracted any further disciplinary matters since 2015.
 - Mr. Juneja appears to be taking steps towards addressing personal health and addiction matters.
 - A number of other lawyers have spoken highly of Mr. Juneja's abilities as a lawyer.

140. The Hearing Committee failed to properly consider additional mitigating circumstances including that:
- Mr. Juneja's conduct did not impact any clients;
 - Mr. Juneja's failure to comply with his practice restrictions was limited to two instances where he was advised by his LSA supervisor that he was not breaching the restrictions. His breach of the restrictions was not a flagrant disregard of them.
 - Mr. Juneja's psychiatrist identified a causal connection between his psychological condition and his offending behavior.
 - Mr. Juneja's psychiatrist identified undiagnosed conditions that played a role in his misconduct for which he sought active treatment.
 - Mr. Juneja's use of alcohol and drugs have not impacted his law practice.
141. The Hearing Committee erred by concluding that Mr. Juneja was ungovernable and failed to consider all of the appropriate mitigating factors. As a result, they imposed an unreasonably long suspension. A shorter suspension will adequately protect the public's confidence in the profession and satisfy the purposes of deterrence and denunciation.
142. Applying the principles of proportionality and restraint, the Appeal Panel finds that an appropriate suspension is 5 months, to take effect 90 days following this decision.
143. To be complete in relation to sanction, we should address the LSA's submissions seeking to increase the sanction from suspension to disbarment. Specifically, we address this unusual request and consider whether it amounts to an impermissible cross-appeal.
144. Historically the *Act* did not include an internal appeal of discipline decisions. Appeals from discipline decisions went to the Court of Appeal and only the member could bring such an appeal, not the LSA (RSA 1922, c 206, section 33).
145. In 1969 a layer of internal appeal was added to allow a member to appeal a finding of a hearing committee to the Benchers: section 64(5). Again, that right belonged only to the member. That is reflected in the *Act's* current wording, which only allows the member to appeal a hearing committee decision to an appeal panel or an appeal panel decision to the Court of Appeal: sections 75, 80.
146. The above is not true of every profession. The choice of whether and when to permit the regulator the right to appeal internally or to the courts is a considered decision by the Legislature. Some statutes provide the regulator with a right of appeal either internally, or to the courts, or both. Under the *Health Professions Act*, for example, "an investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal...": section 87.
147. The LSA in its submissions admits that "only the member has a right to appeal a decision of a Hearing Committee, not the LSA", but takes the position that "once the member has filed the appeal, the Benchers may confirm or quash any finding of guilt

made by the Hearing Committee”. It is true the Appeal Panel has wide statutory power to confirm or vary a hearing committee’s decision, or “replac[e] it with any other order that the Committee could have made under that section”: section 77.

148. There are two possible ways to interpret the combined effect of section 75 – where only the member, not the LSA, can appeal – and section 77, where the Appeal Panel can substitute any sanction it likes, including departing upward from the Hearing Committee. Either reading should take into account both the Legislature’s choice to restrict the LSA’s right of internal and external appeal and the Appeal Panel’s wide power to substitute a harsher sentence if it wishes.
149. The first reading would prevent the LSA from arguing to increase sanction on appeal on the basis that it undermines the Legislature’s intention to restrict the LSA’s right to appeal, effectively allowing the LSA a backdoor to make arguments barred by law.
150. The second reading would permit the LSA to argue, when a member has launched an appeal, that the sanction should be increased. Given the powers of an Appeal Panel, it may not be improper for *someone* to argue for an increased sanction – and if not the LSA, who?
151. The first interpretation would create a chilling effect on members’ appeals. Some members would be deterred from appealing even where the first-instance sanction is arguably disproportionate, for fear of a worse outcome. This would tend to reduce the error-correction role of appeal panels, because only more risk-tolerant members would appeal.
152. The second reading would mean members would be freer to test sanctions on appeal, improving error-correction. The LSA would lose the ability to “ratchet up” in marginal cases. The Appeal system would, however, effectively function as a one-way valve in favour of members. And, encouraging member appeals would have some cost implications, taken from the LSA’s limited time and resources.
153. The social price of under-deterrence (sanctions which are too light) is harm to the public by diminished confidence in the profession. Over-deterrence by sanctions that are too harsh causes harm too, chilling professional practice that would serve clients.
154. There is an attractive middle-ground between these two readings of the *Act*. That the LSA cannot formally argue on appeal to increase a sanction, but the Appeal Panel retains its existing statutory power to do that *sua sponte* (on its own motion). That preserves an Appeal Panel’s power to increase a sanction where necessary to protect the public, while respecting the legislative determination that the LSA not have a right of appeal. In our view this reading most fairly and purposively applies the Legislature’s intention.
155. For the reasons expressed above, the Appeal Panel declines the LSA’s invitation to increase the sanction.

COSTS

Decision of the Hearing Committee

156. The Hearing Committee ordered that Mr. Juneja pay costs in the amount of \$133,670.92 by May 1, 2027, approximately 27 months after the Sanction Decision. The amount of costs awarded was the entire amount sought by the LSA, including legal fees at \$125.00 per hour, investigator fees at \$100.00 per hour plus actual expenses for expert evidence, transcripts, court reporters and the hearing. The Hearing Committee concluded that a substantial costs award was justified because Mr. Juneja was found guilty of very serious misconduct.

Position of Mr. Juneja

157. The following arguments were made on behalf of Mr. Juneja:
- Costs should not be punitive and are not to be a sanction.
 - A lawyer's right to defend charges should not be discouraged by the prospect of large cost awards.
 - The costs award of the Hearing Committee was punitive and should be substantially reduced.

Position of the LSA

158. The following arguments were made on behalf of the LSA:
- Section 72(2) of the *Act* provides the Hearing Committee with authority to order payment of all or part of the costs of the proceedings.
 - The large amount of costs was reflective of the complexity and length of the Hearing.
 - The LSA was successful in proving each particular of all six citations.
 - The legal fees were reasonable. The amount of time was not high given the complexity of the proceeding and \$125.00 per hour is a very low rate.

Decision of the Appeal Panel on Costs

159. Having modified the decision below in part, and in light of the major change to the costs regime brought about by the Court of Appeal's decision in *Charkhandeh*, the Appeal Panel sets costs afresh. Under *Charkhandeh*, we must address three questions as explained in the recent LSA decision of *Law Society of Alberta v. Goldsworthy*, 2025 ABLS 22, at paragraph 41 as follows:

... the reasons do not boil down the Court's guidance to an easy-to follow recipe for decision makers in assessing costs. But one can be discerned:

- 1) Are costs warranted at all? There is no presumption costs will be ordered. The number of allegations and degree of overall success are driving factors. Party conduct during the proceeding is an important consideration.
- 2) If costs are warranted, what should the amount be? The costs claimed should be explained in detail and scrutinized.
 - i. Were the expenses reasonably incurred in light of the nature of the investigation, the allegations, and the hearing process?
 - ii. Are any of the claimed amounts "background overhead expenses" which are an inherent component of self-regulation and properly fall on the regulator?
 - iii. Was the quantum paid by the regulator fair and reasonable?
 - iv. Does the quantum represent an amount that the losing party should reasonably be expected to pay the winning party?
 - v. What award is proportionate to the issues involved and the overall burden to the member?
- 3) Would that amount be a "crushing financial blow"? This last-look puts a cap on what would otherwise be a proportionate award.

160. As stated above, there is no presumption costs will be awarded. The degree of success is an important factor in deciding if costs should be awarded. Here, the LSA advanced six citations containing a total of 19 particulars. The Hearing Committee found all 19 had been proven and constituted conduct deserving of sanction. On appeal, the Appeal Panel overturned one of the six citations, and found that seven of the 19 particulars—about a third of them—were either not proven or did not constitute conduct deserving of sanction: citations 1(a), 3(c)(1), 3(c)(2), 4(a), 4(d), 5(c)(1), 5(c)(2)—i.e. the LH litigation particular and the particulars regarding marijuana. The Appeal Panel accordingly re-sanctioned Mr. Juneja, and his new sanction is substantially lower than originally imposed.
161. It is fair to say that the LSA was successful in part, but not in full. While the LSA is entitled to costs, those costs ought to reflect the degree of success.
162. In determining the appropriate amount of costs, we have examined the LSA's proffered the Revised Statement of Costs, in the total amount of \$115,397.93, plus \$6,890.23 for costs of the appeal (including the time drafting a 100-page single spaced appeal factum). This amount is modestly lower than that originally sought. It eliminates all per diem hearing expenses (\$4,725.00) and court reporter fees (\$11,503.28) as falling within the category of "background overhead expenses" which are an inherent component of self-regulation and properly fall on the regulator. The Revised Statement of Costs does not otherwise reduce the fees either of the investigation or counsel. The LSA argues that "these proceedings were complex, comprising 9 hearing days, 24 witnesses, 9 expert reports, and 103 exhibits, and the LSA was entirely successful in proving its case." It notes the rates charged for counsel, \$125.00 per hour, are very low. The rate for the investigator was \$100.00 per hour.

163. In terms of time, the investigator recorded 150.4 hours, an unusually large amount in context. For the merits phase, counsel spent 84.6 hours of pre-hearing time (*not* including hearing prep or written briefing, discussed below), including 54.8 hours on a six-page Agreed Statement of Facts, which appears unduly high. In addition, 120.8 hours were spent on pre-hearing preparation, not including disclosure, particulars, expert preparation, or writing briefs. That is again a very large amount. LSA counsel claims an additional 110.8 hours for written hearing submissions on the merits portion of the hearing. For the sanction hearing, counsel recorded 45.5 hours of preparation time, plus 25.3 hours arranging experts, and a further 35.8 hours for written submissions.
164. In total, counsel claims 84.6 hours of pre-hearing time, 326.5 hours of merits hearing time, and 123.9 hours of sanctions hearing time, for a total of 535 hours.
165. Regarding experts, the LSA seeks \$14,109.38 in disbursements, counsel's associated time and fees in arranging for and presenting the expert report and testimony of Dr. C.E. The questions posed by the LSA that were answered in Dr. C.E.'s May 4, 2019 report do not directly relate to the proof of the citations. This evidence of Dr. C.E.'s related to Mr. Juneja's capacity to practice law, not the citations, and was not squarely cited in either the Merits Decision or the Sanction Decision.
166. The LSA's post-*Charkhandeh* Revised Statement of Costs maintains its full indemnity position. The Court of Appeal in *Charkhandeh* held that full indemnity will be unusual, and we do not see the proceedings here as forming the basis of a full indemnity award, given the Court of Appeal's guidance.
167. One key consideration is, "whether costs have been increased due to the unreasonable or inefficient litigation conduct of either party. That would include things like introducing unnecessary or irrelevant evidence, overcharging by ..., refusing to admit uncontested facts, bringing unnecessary applications, delaying proceedings, or failing to meet reasonable deadlines": *Charkhandeh*, paragraph 142. In that regard, the LSA suggests that "many of the costs incurred by the LSA were the result of litigation decisions made by and on behalf of Mr. Juneja."
168. In the Appeal Panel's view, the costs of the hearing were made larger than they ought to have been by the choice of the LSA to pursue certain particulars of the citations which were minor or technical, not rising to the level deserving sanction. In particular, the elements regarding marijuana use, either after Mr. Juneja's prescription had expired or during a time when legalization of marijuana had passed Parliament but had not yet been proclaimed. In addition, we do not see the L.H. citation and associated hearing time as having been warranted in the circumstances.
169. While it is true that Mr. Juneja did not agree in full with the Statement of Agreed Facts and Exhibits initially presented by the LSA, given our conclusion that a third of the particulars were not proven as conduct deserving of sanction, that was not an unreasonable position, and in the end the Statement of Agreed Facts and Exhibits was agreed to. In addition, we observe that the volume of time recorded, particularly for written briefing, was very high.
170. The Appeal Panel must determine what quantum of costs represents an amount that the losing party should reasonably be expected to pay the winning party and is proportionate to the issues involved and the overall burden to the member (*Charkhandeh*, paragraph

144). In our view, weighing the factors discussed above, a fair all-inclusive award of costs for the proceedings before the Hearing Committee is \$45,000.00.

171. We must consider whether this amount would constitute a “crushing financial blow”, particularly when combined with a relatively long suspension that will, while it lasts, largely eliminate Mr. Juneja’s ability to pay. While we do not view the quantum set as crushing, given the suspension, it is prudent to provide significant time to pay. We order that the costs be paid in three installments of \$15,000.00, payable on January 1, 2027, June 30, 2027, and December 31, 2027.
172. As to the costs of the proceedings before the Appeal Panel, we note these were canvassed in the LSA’s supplementary costs submissions, but this was prior to the release of this decision, and the appeal costs have not yet been addressed by Mr. Juneja. We invite the LSA to provide any further submissions it wishes to make on the appeal costs within one month of this decision. Mr. Juneja may provide any submissions in response within two weeks of that date, following which the Appeal Panel will set the costs of the appeal.

Summary of the Appeal Panel Decision

173. For the reasons explained above, the appeal of Mr. Juneja is allowed in part. The Appeal Panel’s decision is that:
- The findings of guilt of conduct deserving of sanction are upheld on citations 1-5 and overturned as to citation 6. The findings of guilt in relation to some of the particulars are set aside as explained above.
 - The suspension of Mr. Juneja’s right to practice law is reduced to a period of five months commencing 90 days after the date of this decision.
 - The costs of the proceedings before the Hearing Committee are reduced to \$45,000.00 payable in three installments of \$15,000.00 on January 1, 2027, June 30, 2027 and December 31, 2027.
 - Costs of the proceedings before the Appeal Panel will be addressed in a future decision unless the LSA and Mr. Juneja agree on the costs of the appeal.

DELAY

174. A factor we should mention is delay. Delay, both in addressing complaints made to the LSA and in hearing and determining citations against lawyers, is generally not a good thing. Delay leaves complainants wondering what happened to their complaint and lawyers who are subject to citations with the stress of allegations hanging over their heads. The LSA needs to do better at moving complaints and citations through the process. We say this, recognizing that this is difficult for the LSA given the increasing number of complaints and limited resources. We also say this, acknowledging the inordinate length of the time this Appeal Panel has taken to render this decision.

175. Unlike most situations, the delay in this case has benefited Mr. Juneja in two ways. First, while this appeal decision was on reserve the Court of Appeal released its decision in *Charkhandeh* which provided instructions to professional disciplinary tribunals that contributed to reducing the amount of costs payable by Mr. Juneja and the severity of his sanction. Second, the delay between the citations being issued and the initial hearing favored Mr. Juneja because he practiced for many more months without any further issues with his undertakings to the LSA or otherwise. The Appeal Panel took that into account in its determination of the appropriate sanction.

CONCLUDING MATTERS

176. 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 Mr. Juneja will be redacted to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated October 9, 2025.

Grant Vogeli, KC

Glen Buick

Scott Matheson

Kelsey Meyer

Sharilyn Nagina, KC

Mary Ellen Neilson

Ron Sorokin

Nicole Stewart