

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

AND

**IN THE MATTER OF AN APPEAL
REGARDING JOHN ZANG
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Appeal to the Benchers Panel

Jim Lutz, KC – Chair
Stephanie Dobson, KC - Bencher
Levonne Louie – Lay Bencher
Scott Matheson, KC – Bencher
Erin Runnalls, KC - Bencher
Ron Sorokin, KC - Bencher
Grant Vogeli, KC - Bencher

Appearances

Shanna Hunka - Counsel for the Law Society of Alberta (LSA)
John Zang – Self-represented

Hearing Date

May 6, 2025

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

Overview

1. Mr. Zang is a practicing member of the Law Society of Alberta working in securities and corporate law.
2. In 2014, Mr. Zang acting in his personal capacity, had business dealings involving [KC Ltd.], facilitating and transferring his personal and corporately held shares to a recently incorporated Delaware Company which mirrored Mr. Zang's own Alberta Corporation, which held shares.
3. The history of the share purchase and transfer is set out in the Hearing Committee Report Merits Decision - December 18, 2023 (Merits Decision), Hearing Record, Section B, Tab 1 at paragraph 65-83 with commentary by the Committee.
4. At the conclusion of the hearing, the Committee found Mr. Zang guilty of the following citation:

It is alleged that John C. Zang acted in his business dealings with KC Ltd. in a manner that brought the profession into disrepute and that such conduct is

deserving of sanction.

5. The Committee sanctioned Mr. Zang on August 12, 2024, finding the appropriate disposition to be a four-month suspension and costs in the amount of \$47,347.46 to be paid within one year of the date of the decision (Hearing Committee Report Sanction Decision – August 12, 2024 (Sanction Decision), Hearing Record, Section B, Tab 2).
6. The suspension and sanction were stayed pending the appeal of this matter (Stay Pending Appeal Order - September 15, 2024).
7. Pursuant to section 75 of the *Legal Profession Act (LPA)*, Mr. Zang appealed the Hearing Committee's Merits Decision and Sanction Decision.
8. On May 6, 2025, the appeal of Mr. Zang was heard by this Appeal Panel. Subsequent written argument was filed in July 2025 and reviewed by the Appeal Panel in September 2025.
9. After reviewing the Hearing Committee Decisions and the Hearing Record and considering the submissions of the LSA and Mr. Zang, for the reasons set out below, the Appeal Panel confirms the Hearing Committee's finding of guilt on the citation.
10. The Appeal Panel also confirms the Hearing Committee's determination on sanction of a suspension of four-months, commencing June 1, 2026.
11. The Appeal Panel allows the costs appeal and varies the costs amount to \$36,623.93 for the reasons contained in paragraph 120 of this report.

Preliminary Matters

12. There were no objections to the constitution of the Appeal Panel or its jurisdiction. A private hearing was not requested so a public hearing on Mr. Zang's matter proceeded.

Background

13. The Agreed Statement of Facts (Merits Decision, Appendix A) sets out various agreed facts. The conduct at issue involved Mr. Zang transferring shares in KC Ltd. from his and his wholly owned company's (164 Alberta) trading accounts in the face of a Cease Trade Order (CTO) made pursuant to section 33.1 of the Alberta Securities Act on April 3, 2014.
14. Mr. Zang was informed of the CTO on April 5, 2014.
15. Mr. Zang subsequently incorporated a Delaware Corporation (164 Delaware). He was the sole director and officer of 164 Delaware.
16. Mr. Zang arranged shares in KC Ltd. to be transferred through his and 164 Alberta's trading account to brokerages located in the United States.
17. On April 29, 2024, Mr. Zang approved an individual, AP, to arrange trading accounts to be opened in the name of Mr. Zang and 164 Delaware in the United States.
18. On April 30, 2014, Mr. Zang paid for a legal opinion pursuant to United States regulatory

requirements which enabled 29.5 million shares in Mr. Zang's name and 49.5 million shares in the name of 164 Delaware to be sold (Hearing Record, Exhibit 14 and Merits Decision, Appendix A, Agreed Statement of Facts, para. 24).

19. The legal opinion rendered by M.C. relied on the Share Compensation Agreement, indicating shares of KC Ltd. would be provided to 164 Delaware in exchange for technical and consultation services. The document was sent to Mr. Zang on May 1, 2014, with an effective date of March 27, 2013. Mr. Zang signed and returned the document on May 1, 2014 over a date of March 27, 2013. 164 Delaware did not come into existence until April 17, 2014 (Merits Decision, paras. 73-78 and Appendix A, Agreed Statement of Facts, paras. 21 and 25).
20. As well, Mr. Zang completed a Heightened Risk Security Policy Questionnaire and in response to a question as to when 164 Delaware had acquired the shares, Mr. Zang wrote "Agreed to March 27, 2013" and indicated 164 Delaware had provided KC Ltd. with consulting services as consideration for the shares (Hearing Record, Exhibit 16 and Merits Decision, Appendix A, Agreed Statement of Facts, para. 26).
21. Further share transfers occurred leading to the sale of all or substantially all of the KC Ltd. shares out of 164 Delaware and Mr. Zang's accounts where in turn Mr. Zang received repayment of a loan of \$25,000.00 from the proceeds of the sales (Merits Decision, Appendix A, Agreed Statement of Facts, paras. 29 and 30).
22. The monies realized by Mr. Zang were nominal (Merits Decision, Appendix A, Agreed Statement of Facts, para. 32).
23. At no time was Mr. Zang acting on behalf of a client or providing legal services.
24. Subsequent investigations by the ASC led to a public Settlement Agreement being entered into with Mr. Zang (ASC Settlement Agreement and Undertaking, Hearing Record, Section D, pg. 834-840, Exhibit 9 and reported on CanLII (*Re Zang*, 2019 ABASC 171). In the ASC Settlement Agreement, Mr. Zang admitted breaches of the *Securities Act* and agreed to multiple sanctions (Merits Decision, at para. 2).
25. Prior to the Hearing Committee convening, a further Agreed Statement of Facts was agreed to between Mr. Zang and the LSA which contains many of the agreed facts from the ASC Settlement Agreement with some exceptions (Hearing Record, Exhibit 33).

Standard of Review

26. The decision of the Alberta Court of Appeal in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98, sets out the standard of review applicable to a statutory appeal to a higher administrative authority. The Appeal Panel notes that the decision in *Yee* was issued after the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, which dealt with appeals from an administrative body to an external body, the Courts. This is an internal appeal, as was the case in *Yee*.
27. In *Yee*, Justice Slatter set out succinctly, the following guidelines at paragraph 35 of his Reasons:

When reviewing the decision of a discipline tribunal, the appeal tribunal should remain

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

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

28. The Appeal Panel applies this standard of review to this Appeal.

Grounds of Appeal

29. Mr. Zang advanced the following arguments at the appeal:

- a. The Hearing Committee proceeded to hear the matter where there was a conflict of interest, bias or reasonable apprehension of bias involving the Hearing Committee Chair, Kathleen Ryan, KC;
- b. Disputed evidence: Mr. Zang asserts the Hearing Committees wrongfully entered inadmissible evidence, including:

- i. The LSA investigator's evidence and Investigation Report;
 - ii. Alberta Securities Commission interview transcripts (ASC Transcripts) and the ASC Settlement Agreement;
 - iii. Use of the ASC Expertise and the Kilimanjaro ASC 2021 decision.
30. Mr. Zang also asserts the Hearing Committee erred by:
 - a. Relying on the ASC Settlement Agreement;
 - b. Finding a breach of the *Securities Act* by Mr. Zang;
 - c. Finding Mr. Zang committed wrongful conduct that was sanctionable; and
 - d. Imposing an unreasonable sanction that was contrary to law.

Recusal of the Hearing Committee Chair

31. Mr. Zang urged the Appeal Panel to consider that Ms. Ryan, the Hearing Committee Chair, was in a conflict of interest, was biased, or that there was a reasonable apprehension of bias, thereby justifying her recusal. More specifically, Mr. Zang suggested there is an onus on Ms. Ryan to put in place “safeguards to avoid any improper communication and avoid any conflict of interest” between herself and members of her firm.
32. Mr. Zang points to a lawyer (A), who was a former lawyer for the ASC, now working at the same firm as Ms. Ryan. Mr. Zang had previously asked A to represent him, however, A indicated that would be a conflict. While Ms. Ryan confirmed that a screen would be put in place, Mr. Zang takes the position that Ms. Ryan had an obligation to tender evidence regarding the screen and an undertaking that no communications have occurred. Mr. Zang takes the position that knowledge of one member of the firm is knowledge of all members and that the onus was on the Hearing Committee Chair to provide evidence of reasonable measures to protect any disclosure.
33. LSA counsel submits there is no merit in this argument and Mr. Zang previously made the admission that the argument is without merit. Nevertheless, Mr. Zang continued to pursue this argument as a ground of appeal.
34. The onus is on Mr. Zang to establish a conflict of interest, actual bias, or a reasonable apprehension of bias. The jurisprudence cited by the Hearing Committee correctly stated the test for apprehension of bias, *Wewaykum Indian Band v. Canada*, [2003] SCR 259 at paragraph 60 recited in *R. v. A(JL)*, 2009 ABCA 344 at paragraph 8:

The test is the perception of the reasonable person, not an observer with a suspicious mind or one that is too sensitive (para. 8).

Further, the Court noted the hypothetical reasonable person must know all the facts, including internal court practice not observable by outsiders (para. 21).

35. This ground of appeal involves a question of law and assertions regarding the fairness of the process. As noted in *Yee*, the appeal tribunal is equally well positioned to make the necessary findings and can intervene if there has been unfairness.
36. The Appeal Panel finds there is no evidence or assertions supporting a conflict of interest, an actual bias or a reasonable apprehension of bias. There is no evidence to support a conflict of interest or actual bias exists in this case. The information available is that Ms. Ryan advised that she had never met A and the hearing materials were screened such that no one, other than Ms. Ryan and her administrative support staff, had access to them. There was also no evidence that A had any involvement in the LSA proceedings.
37. In considering the issue of reasonable apprehension of bias, the Appeal Panel applied the test outlined in *Wewaykum* and found that the test was not met in the circumstances of this case. A reasonable person, with knowledge of the facts and the practice of LSA proceedings, would not conclude that there was a reasonable apprehension of bias in this case.
38. The Hearing Committee correctly applied the law, and the decision that there was no conflict of interest, bias or reasonable apprehension of bias was reasonable and supported on the facts in this case.

The LSA Investigator's Evidence and LSA Investigation Report

39. Mr. Zang argues the Hearing Committee improperly relied on a number of items of evidence.
40. Mr. Zang argues the Hearing Committee erred in law and natural justice by relying on the admitted hearsay contained in the evidence of the LSA investigator. As well, he contends the Investigation Report should not have been admitted in evidence.
41. The Hearing Committee admitted the LSA Investigation Report under section 68 of the *LPA* which provides that the rules of evidence do not apply and gives the Hearing Committee broad discretion to accept evidence in any manner it sees fit.
42. It is noted as well that Mr. Zang relied upon hearsay evidence from the LSA Investigation Report. The Appeal Panel noted that a party cannot have it both ways.
43. As noted by LSA counsel, much of the LSA investigator's work consisted of reviewing and compiling the ASC investigation and evidence. While the LSA investigator testified and the LSA Investigation Report was admitted as an Exhibit, the Hearing Committee did not significantly rely on the LSA investigator's evidence in its Merits Decision.
44. The Appeal Panel finds no error in the Hearing Committee admitting the LSA investigator's evidence and Investigation Report. Further, the Hearing Committee was entitled to rely on documents compiled in the Investigation Report, namely the ASC Transcripts and ASC Settlement Agreement, as discussed further below as well as section 68 of the *LPA*.

ASC Transcripts and ASC Settlement Agreement

45. Mr. Zang argued the ASC Transcripts and ASC Settlement Agreement reached with the ASC cannot be used by the Hearing Committee owing to the privileged nature of the settlement and the protections afforded by sections 7 and 13 of the *Charter of Rights and Freedoms* and section 6(2) of the *Alberta Evidence Act*.
46. LSA counsel submits Mr. Zang is seeking to re-litigate the ASC Settlement Agreement which would be an abuse of process.
47. LSA counsel correctly points out under section 69 of the *LPA*, Mr. Zang is a compellable witness and would be required to testify, which would ensure the same information covered by the ASC Transcripts and ASC Settlement Agreement would be admitted in the LSA Hearing and would become admissible and available to the Hearing Committee and be given appropriate weight.
48. In the Merits Decision, the Hearing Committee allowed the evidence to be admitted under section 68 of the *LPA* which states:

Evidence

s. 68 (1) In proceedings under this Division, a Hearing Committee, the Practice Review Committee, or the Appeal Committee:

- a) may hear, receive and examine evidence in any manner it considers proper, and;
- b) is not bound by any rules of law concerning evidence in judicial proceedings.

49. The *LPA* grants broad discretion to accept evidence. The Hearing Committee engaged in this analysis with respect to the disputed evidence which included the ASC Transcripts and ASC Settlement Agreement (Merits Decision, at paras. 42 to 52).
50. Mr. Zang relies on *R. v. Cameron*, 2020 ABCA 276. In *Cameron* at paragraph 37-38, the Court notes, the underlying purpose of the protection against self-incrimination in section 13 and the Charter, and section 6 of the *Evidence Act*:

The essence of the *bargain* contemplated in s. 13 of the Charter and s. 5 of the [Canada] *Evidence Act* is that a person who testifies may be compelled to answer incriminating questions, but she will be protected from having those answers used against her in another proceeding, except for a prosecution for perjury or giving contradictory evidence. The underlying bargain is that, so long as she tells the truth, such answers can't be used against her in another proceeding. However, if she fails to tell the truth, she can be prosecuted for perjury or for giving contradictory evidence.

[This underlying bargain breaks down if the evidence in the first proceeding is not under oath and, therefore, not subject to a prosecution for perjury for giving, contradictory evidence. If s. 13 were to apply to unsworn evidence, it would create an opportunity for a person to providing inconsistent evidence in two proceedings and avoid both prosecution and being held accountable in the

second proceeding for the inconsistency. This would defeat the purpose of the section, which is to encourage truth telling in the first proceeding by limiting the use of that evidence in a subsequent proceeding to a prosecution for failing to be truthful. In our view, in light of the purpose of s. 13, this is not a correct interpretation of the section. The protection of s. 13 is limited to testimony given under oath in the first proceeding.

51. In consideration of section 13 of the Charter and the Alberta *Evidence Act*, the Court of Appeal in *R. v. Cameron* (2020) ABCA 276, aptly noted a sworn statement by an individual may not be later used against them except for a prosecution for perjury or giving contradictory evidence. Mr. Zang's ASC Settlement Agreement was unsworn thus he cannot avail himself of the protection against self-incrimination because he faces no jeopardy for providing potentially contradictory evidence in both proceedings.
52. Mr. Zang also relied on *R. v. Iyer*, 2014 ABQB 356, where Justice Moen ruled on the use of settlement agreements and their limitations. In *Iyer*, the Court noted the ASC was a creature of statute with only those powers conferred on it by the legislature. One Crown agency cannot limit the discretion of another Crown agency in an area over which it lacks statutory authority (at para. 34, citing *ATCO Gas and Pipeline Ltd. v. Alberta (Energy and Utility Board)*, 2004 2 SCC 4 at para. 35)).
53. The *Securities Act* does not grant or confer any power on the ASC or its agents authority over criminal proceedings. Similarly, the Appeal Panel finds no such language in the statute that would in any way constrain a prosecution under the *LPA*. Simply put, the *Securities Act* does not restrict the authority of the LSA or its prosecutions as both the LSA and ASC have statutory defined roles.
54. LSA counsel submits Mr. Zang made admissions in the ASC Settlement Agreement and these admissions are admissible under section 68 of the *LPA* as the Hearing Committee has the authority to accept any evidence it sees fit.
55. In *Trang v. Alberta (Edmonton Remand Center)*, 2002 ABQB 658, Justice Marceau ruled on the use of prior proceedings in non-criminal trials at paragraph 32 he noted:

Where not precluded by the relevant statute, a common law rule respecting admissibility of non-criminal proceedings must govern.
56. It is important to recall that the *LPA* contains no exclusionary provision on the use of prior proceedings, thereby rejecting the rationale that there exists a rule, barring admissibility of judicial findings at later civil proceedings. *Spectra Agricultural Group v. St. Michael's Extended Care Society*, 2001 ABQB 887 (at para. 24).
57. Also, the Court in *Trang* (at para. 44) specifically adopts the reasons in *Spectra*, at paragraph 24 noting:

I do not accept that there is a common law rule that evidence of a previous civil judgement is inadmissible as evidence of facts in a subsequent civil proceeding.
58. It is settled law in Alberta and given the decisions in *McDonald v. Law Society of Alberta* (1993) CanLII 724 (ABQB) and *Pearlman v. Law Society of Manitoba* (1991) CanLII 26 (SCC), the Hearing Committee's decision to allow this evidence is affirmed. (Merits

Decision, at para. 41-43).

59. In *Chartered Professional Accountants of Alberta v. Ironside*, 2010 (at para. 43), the Tribunal held that notwithstanding Mr. Ironside had not been found to have committed an offence under the *Securities Act*, the admissibility of the facts found by the prior ASC decision, were prima facie evidence of those facts, and it would be an abuse of process to allow Mr. Ironside to re-litigate those findings in his disciplinary proceedings as an accountant (*Ironside (supra)* at para. 50-60).
60. The Appeal Panel accepts this to be the correct statement of the law and that the ASC Transcripts and ASC Settlement Agreement are prima facie evidence and admissible in his LSA discipline matter and not subject to exclusion or re-litigation in this discipline hearing.
61. The ASC Settlement Agreement was properly admitted in the LSA proceedings. Factual admissions in settlement agreements with security regulators (ASC) are admissible in subsequent civil proceedings and are subject to the weight to be given to them by the trial judge or *Fischer v. IG Investment*, 2023 ONSC 915 at para. 194.
62. The Hearing Committee was entitled to rely on the ASC Transcripts and ASC Settlement Agreement as evidence given Mr. Zang's vigorous participation in the ASC proceedings without relitigating them (*Law Society of Ontario v. Daley*, 2024 ONLSTH 106 at para. 5).
63. The Appeal Panel notes that the ASC Transcripts and ASC Settlement Agreement were simply evidence before the Hearing Committee. The decision of whether the conduct was conduct deserving of sanction was for the Hearing Committee. This distinction was recognized by the Hearing Committee (Merits Decision, at para. 51).
64. Leaving aside section 68 of the *LPA*, which allows a hearing committee to admit this evidence, the Appeal Panel notes in *Toronto (City) v. C.U.P.E. Local 79*, 2003 SCC 63, the majority held that to re-litigate a matter would engage the doctrine of abuse of process and be detrimental to the adjudicative process.
65. The Court noted it would be improper to attempt to impeach a judicial finding here the ASC Settlement Agreement, by the impermissible route of relitigating in a different forum.
66. Justice Arbour comments in *C.U.P.E.* (*supra*) at paragraphs 51-52:

...First, there can be no assumption that relitigating will yield a more accurate result than the original proceeding. Second, if the same result is achieved in the subsequent proceeding, the relitigating will prove to have been a waste of judicial resources as well as an unnecessary expense for the parties and possibly an additional hardship for some witnesses. Finally, if the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality.

In contrast, proper review by way of appeal increases confidence in the ultimate result and affirms both the authority of the process, as well as the finality of the

result. It is therefore apparent that from the system's point of view, relitigating carries serious detrimental effects and should be avoided unless the circumstances dictate that relitigating is in fact necessary to enhance the credibility and effectiveness of the adjudicative process as a whole. There may be instances where relitigating will enhance, rather than impeach, the integrity of the judicial system, for example: (1) when the first proceeding is tainted by fraud or dishonesty; (2) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or (3) when fairness dictates that the original result should not be binding in the new context. This was stated unequivocally by this court in *Danyluk*, (supra) at para. 80.

67. In this appeal, none of the aforementioned reasons for relitigating apply.
68. More specifically, the common law doctrines of issue estoppel, abuse of process and collateral attack are engaged when considering whether or not to allow Mr. Zang to relitigate the ASC Settlement Agreement (*Toronto (City of) v. Canadian Union of Public Employees*, 2001 CanLII 24114 (ON CA)) at paragraph 76.
69. Justice Arbour cites the reasons of Justice Doherty from the Court of Appeal, at paragraph 44 of the SCC decision:

The adjudicative process, and its various manifestation strives to do justice. By the adjudicative process, I mean the various courts and tribunals to which individuals must resort to settle legal disputes. Where the same issues arise in various forums, the quality of justice delivered by the adjudicative process is measured not by reference to the isolated result in each forum, but by the end result produced by the various processes that address the issue. By justice, I refer to procedural fairness, the achieving of the correct result in individual cases and the broader perception that the process as a whole achieves results which are consistent, fair and accurate.

70. Justice Arbour at paragraph 46 aptly notes, a desire to attack a judicial finding is not in itself an abuse of process. The law permits that objective to be pursued through various reviewing mechanisms, such as appeals or judicial review. Mr. Zang engaged in none of these avenues with respect to the ASC Settlement Agreement.
71. The jurisprudence strongly supports the proposition that previous civil proceedings in which the lawyer was party or has actively participated, may be admitted as prima facie evidence in support of disciplinary charges and not proof thereof (*Law Society of Saskatchewan v. Phillips*, 2021 SKCA 16, at para. 74 and 77) noted:

Gavin Mackenzie states the following in *Lawyers and Ethics: Professional Responsibilities and Discipline loose-leaf (Rel 2020-4)* (Toronto: Thomson Reuters, 2020) at 26.14.2-24.14.3 [Lawyers & Ethics].

26.5 – Parallel, Criminal and civil proceedings.

... Now that it is established that the standard of proof imposed on the Law Society to prove professional misconduct is the same as the standard of proof and civil proceedings, *it is clear that the Law Society may also rely on judicial findings in civil proceedings, as at least prima facie proof of the underlying*

evidence in support, if the lawyer is a party to the civil proceeding and actively participates in it.

What remains to be authoritatively decided in the context of Law Society discipline proceedings is whether the findings of fact in parallel, criminal or civil proceedings are conclusive proof of those facts, or whether the lawyer is entitled to litigate the findings, bearing the evidentiary burden of tendering evidence to displace them. The Supreme Court of Canada has held that when asked to decide whether a criminal conviction ought to be rebuttable or taken as conclusive in a grievance arbitration, courts should turn to the doctrine of abuse of process to ascertain whether relitigating would be detrimental to the adjudicative process. In the 2013 decision, the Supreme Court of Canada declined to apply to the doctrine of issue estoppel to prevent a complainant from pursuing a civil action for damages against the police on the basis of the complainant notes of police misconduct arising out of the same facts had been dismissed by a police disciplinary tribunal. The court held that the pre-conditions to establish issue estoppel had been met, the court should exercise its discretion to refuse to apply the doctrine where to apply it would work an injustice based on the reasonable expectations of the parties about the effect of the proceedings on their broader legal rights. In a 2010 decision, the appeal panel of the Law Society of Upper Canada “left for another day” the circumstances in which a lawyer facing discipline proceedings may be precluded from relitigating, adverse judicial or administrative findings.

72. The Hearing Committee’s finding concerning the ASC Transcript and ASC Settlement Agreement are entitled to deference, unless the conclusion reached was based on an error in law or was not reasonably sustainable (Yee (supra), at para. 35). We find neither.
73. In addition, as recognized by the Hearing Committee (Merits Decision, at para. 43), the Appeal Panel noted that Mr. Zang and LSA counsel reached an Agreed Statement of Facts (Hearing Report, Exhibit 33) which effectively deals with Mr. Zang’s original objection to the use of the ASC Settlement Agreement and ASC Transcripts, specifically with respect to section 7 and 13 of the Charter as well as section 6 (2) of the *Alberta Evidence Act*.

Use of ASC Expertise and Proceedings (Kilimanjaro ASC 2021 Decision)

74. Mr. Zang objected to the use of ASC expertise and reference to *Kilimanjaro Ltd.*, 2021 ABASC 14 (Kilimanjaro Decision). He submitted he was not a party to the proceedings and use of this decision was prejudicial to his hearing.
75. Mr. Zang submitted the Hearing Committee erred in deferring to the ASC’s expertise by prima facie accepting the expertise and findings by the ASC and applying them to the hearing. Mr. Zang argued “the panel cannot rely on the ASC expertise without allowing Zang to challenge it” (Appellant Brief at para. 79).
76. LSA counsel submitted that the Hearing Committee carefully recognized that the Kilimanjaro Decision was not evidence admitted against Mr. Zang per se. Instead, it was admitted to show the outcomes of the others involved in the ultimate fraud committed by Mr. [P] and KCL which Mr. Zang had facilitated.

77. The Appeal Panel struggled with reasons for the admissibility and use of the Kilimanjaro Decision by the Hearing Committee and was concerned with its potential for misuse, especially noting it was difficult to determine where in its decision the Hearing Committee relied upon it.
78. The Appeal Panel also noted that Mr. Zang did not have standing in the Kilimanjaro proceedings before the ASC and could not participate in that hearing as a party.
79. The Kilimanjaro Decision involved other individuals and had no meaningful application to Mr. Zang's matter. The conduct of the unrelated parties and any punishment imposed upon them was irrelevant to Mr. Zang's conduct and as such, it should not have been considered by the Hearing Committee.
80. The ASC specifically noted in its decision:

We have attached little if any weight to the admission of facts in the Moore Settlement and the Zang Settlement. Other than uncontroversial statements or background facts, unless otherwise corroborated by independent and reliable evidence. Kilimanjaro (supra) at para. 19 and 24.
81. In its reasons for decision, the Hearing Committee specifically noted the limited purpose for which the ASC's Kilimanjaro Decision would be used, noting that the Kilimanjaro Decision was entered by the LSA "to show the outcome of others". (Hearing Record, Exhibit 17) (Merits Decision, at para. 85)
82. The Appeal Panel found that the Kilimanjaro Decision should not have been admitted, even for a limited purpose as the potential for prejudice, consciously or unconsciously exceeded the use to be made of the decision to show the outcome of others involved.
83. Mr. Zang argued the Hearing Committee did in fact rely on the Kilimanjaro Decision, pointing to the findings of the Hearing Committee suggesting that the submission that he was able to move the shares to a US company to gain access to an OTC exchange was contrary to the "ASC admissions and findings in related proceedings". (Merits Decision, at para. 90).
84. The Appeal Panel however found that the Merits Decision has sufficient reasons for finding the citation proven, even without any reliance on the Kilimanjaro Decision. The Hearing Committee's comment at paragraph 90, is not sufficient to show that the Hearing Committee improperly relied on the Kilimanjaro Decision.
85. The Hearing Committee did note the limited weight to place on the Kilimanjaro Decision. Moreover, the Hearing Committee reminded itself the burden of proof on the citation was on the balance of probabilities, and the burden remains with the LSA (LSA Brief para. 50 citing, Mackenzie, Lawyers and Ethics: Professional Responsibility and Discipline cited in *Phillips* (supra) at para. 74).
86. The Appeal Panel was satisfied that, having regard to the Record and the reasons provided by the Hearing Committee, even if the Kilimanjaro Decision had been excluded, there is sufficient evidence in the admissible evidence to support the citation.

No Breach of the *Securities Act*, No Sanctionable Conduct

87. Mr. Zang takes the position that the Hearing Committee wrongfully relied on the ASC Settlement Agreement. These arguments are addressed above. In addition, the Appeal Panel notes the Hearing Committee relied upon the Agreed Statement of Facts (Hearing Record, Exhibit 33), which but for three paragraphs, mirrors the ASC Settlement Agreement. The three paragraphs not admitted include:
1. Mr. Zang did not admit para. 35 of the ASC Settlement Agreement. In other words, he does not admit his conduct amounted to a breach of the *Securities Act* and objects to the Committees reliance on this admission before the ASC.
 2. Mr. Zang did not admit all the language at para. 19 of the ASC Settlement Agreement. In particular, he does not agree that he financed KCL's "promotional campaign" through paid "promoters." Instead, Mr. Zang admitted that he financed "investor relations."
 3. Mr. Zang modified his admissions to note that he did not, until April 22, 2014, know of AP's trades through Alberta 164 were made after the CTO.
88. The Hearing Committee concluded that even with these exceptions, the citation would be proven through the Agreed Statement Facts signed by Mr. Zang.
89. It is important to note that the burden of proving the citations is always on the LSA; that burden does not shift.
90. In regard to Mr. Zang's exceptions to the Agreed Statement of Facts, the Appeal Panel would note firstly whether or not Mr. Zang's conduct amounted to a breach of the *Securities Act* is only marginally relevant as the LSA proceedings are not concerned with a breach of the *Securities Act* but whether or not the member has breached the LSA Code of Conduct (Code) and engaged in conduct contrary to section 49(a) and (b) of the *LPA*.
91. The Appeal Panel also finds the two remaining exceptions do not alter the conclusions reached by the Hearing Committee in the Merits Decision and that the Agreed Statement of Facts substantiates the citation.
92. The Appeal Panel does express concerns that Mr. Zang would attempt to shield himself from proceeding under the *LPA* by relying on findings of a parallel prosecution by another regulator. The Hearing Committee rightly recognized it would be improper to use the ASC Settlement Agreement and findings to bar a LSA conduct hearing. This would be contrary to the public interest as a lawyer's conduct that reflects poorly on himself, reflects poorly on the profession. (Hearing Record, Merits Decision, at para. 60).
93. Deference is owed to the Hearing Committee decision into Mr. Zang's conduct as a member of the LSA (*Alberta (Security Commission) v. Workum* 2010 ABCA 405 at paras. 26-27). The Appeal Panel found no unreasonableness, error of principle, potential injustice, or any sound basis for intervening with the findings of the Hearing Committee (*Yee* (supra) para. 35).
94. Mr. Zang failed to conduct himself with integrity in his business dealings with KC Ltd.

and such failure brings the legal profession into disrepute. (Rule 3.2-13, Code of Conduct).

95. Mr. Zang asserts without the ASC Settlement Agreement admission there would be no evidence of a breach of the *Securities Act*. This Appeal Panel found no error in the Hearing Committee's decision to admit the ASC Settlement Agreement, as addressed above.
96. Further, the Appeal Panel concerns itself with conduct under section 49 of the *LPA* rather than actionable conduct under the *Securities Act*. Specifically, the *LPA* section in addition to conduct that is incompatible with the best interests of the public or members of the society goes further to stipulate 49(1):

"...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."
97. Mr. Zang's conduct assisted others in illegal conduct. He took no steps to prevent it but actively participated in it. Mr. Zang's efforts to circumvent the CTO represented a defiance of a regulatory order that would bring the profession into disrepute especially someone with Mr. Zang's extensive knowledge of trading and securities law. This is not an area unfamiliar to him. (Merits Decision, at paras. 90-97).
98. We acknowledge as did the Hearing Committee that Mr. Zang did not act on behalf of KC Ltd. or as a lawyer for the client and the profits realized were minimal, it is the conduct that is at issue. That conduct fell below the standard expected of a member of the LSA.
99. For the reasons set out above, the Hearing Committee's decision is upheld.

Sanction

100. The Hearing Committee heard submissions on sanction on May 14, 2024 (Sanction Decision).
101. Both parties agreed a suspension was the appropriate sanction. The LSA suggested a range of three to six months. Mr. Zang suggested a one-month suspension.
102. LSA counsel argues there is no reviewable error in the Hearing Committee's decision and that it should be upheld. LSA counsel cited Mr. Zang's conduct as well as the following authorities:
 - *Law Society of Alberta v. Carlson*, 2012 ABLs 3
 - *Law Society of Saskatchewan v. Migneault*, 2017 SKLSS 7
 - *Law Society of British Columbia v. Cole*, 2024 LSBC 3
103. Mr. Zang contended that a suspension of one month is appropriate and he relied on:
 - *Law Society of Alberta v. Anderson*, 2024 ABLs 26
 - *Law Society of Alberta v. Shea*, 2013 ABLs 13
 - *Law Society of Alberta v. Abdi*, 2014 ABLs 9

104. Of note, *Anderson* (supra), *Shea* (supra) and *Abdi* (supra) were joint submissions on sanction as well as an admission of guilt on the citation or to an amended citation. As noted in *R. v. Anthony-Cook*, 2016 SCC 43, a joint submission affords a level of certainty to the practice that should be encouraged. Moreover, its effect on the proper functioning of the judicial system, and the efficacy of resolution are to be encouraged.
105. In Mr. Zang's case, there was no admission of guilt nor agreement on sanction or to quantum of costs. It stands a fortiori that contesting the citations and the quantum of sanction can never be viewed as an aggravating factor. It is every member's right. The distinction is simply that there is not anything mitigating such as joint submissions or admissions that assist the finder of fact.
106. The authorities cited by LSA counsel range from three months for unwittingly misleading consumers on a securities prospectus (*Carlson*) to two years for facilitating a fraud for a client leading to losses in the amount of \$64 million (*Migneault*). The facts in Mr. Zang's case are much less egregious than *Migneault* and would not warrant that type of suspension.
107. The Appeal Panel finds the decision in *Cole* (supra) closer factually to Mr. Zang's conduct, notably circumventing a securities regulator to the benefit of his client. The lawyer accepted responsibility and received a four-month suspension. The conduct in *Cole* is somewhat more serious given the actions did involve giving a client advice and a third-party who participated.
108. The Hearing Committee properly noted the guideline factors to be considered. The fundamental purpose of sanctions is to protect the public from professional misconduct while maintaining public confidence in the integrity of the profession.
109. The Hearing Committee identified the relevant factors in its Sanction Decision (at paras. 51-52) and properly applied them to the facts of this case. Mr. Zang's submissions do not persuade the Appeal Panel the decision is unreasonable, or an error in law. The submissions of Mr. Zang failed to show any reviewable error in the Hearing Committee's decision on sanction. (Sanction Decision, at paras. 50-53).
110. The Appeal Panel confirms the suspension of Mr. Zang for a period of four months, commencing June 1, 2026.

Costs

111. The Hearing Committee imposed costs in the full amount claimed by the LSA of \$47,347.46 payable one year from the date of the sanction decision citing the principles enunciated in *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336.
112. Following the Hearing Committee's Decision, the Alberta Court of Appeal released its decision in *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258.
113. The LSA's Statement of Costs before the Hearing Committee totalled \$47,347.46. The Statement of Costs allows the Appeal Panel to have "a reasonable idea of the types of expenses that are included in the costs sought and make some assessment of whether those expenses were reasonably incurred" (*Charkhandeh* at para. 146). Those costs include:

- Investigation costs of \$13,187.28 – 122.95 hours at \$100/hr;
 - LSA counsel preparation and hearing costs of \$25,436.25 – 193.8 hours at \$125/hr;¹
 - Merits Hearing Court Reporter costs of \$5,815.43;
 - Merits Hearing per diem hearing expenses of \$1,575;
 - Sanction Hearing Court Reporter costs of \$808.50; and
 - Sanction Hearing per diem hearing expenses of \$525.
114. Importantly, the Court of Appeal in *Charkhandeh* held that “[g]oing forward, costs in disciplinary proceedings should be awarded based on the wording of the statute, and the principles set out in these reasons. The approach in *Jinnah* should not be used.” (at para. 168) As a result, this Appeal Panel must review the Hearing Committee’s award of full costs on appeal on the basis of *Charkhandeh*.
115. The Hearing Committee awarded all of the costs claimed by the LSA against Mr. Zang following *Jinnah* on the basis of the seriousness of his conduct. Pursuant to *Charkhandeh*, costs are not intended to be a form of sanction. They are only intended to allocate the costs of the process and proceedings (para. 138). “[T]he length and extent of the hearing and the conduct of the parties at the hearing are what is relevant, not seriousness per se.” (at para. 140)
116. The Appeal Panel finds that while costs are not presumed against Mr. Zang, the costs of the LSA process and proceedings should be allocated in part to Mr. Zang. Mr. Zang did not undertake the mitigating steps by which costs of the process and proceedings may be reduced, such as early resolution, admitting conduct prior to the hearing, or streamlining the hearing through admissions before the hearing. Mr. Zang did offer to mediate and provided a settlement offer, which was not acceptable to the LSA. The Agreed Statement of Facts was not entered into until after the LSA had put in its case during the merits hearing. Mr. Zang’s conduct during the LSA proceedings lengthened the hearing due to Mr. Zang’s unsuccessful application for recusal or disqualification of Ms. Ryan on the Hearing Committee.
117. The LSA investigation was made more efficient by the production of the ASC materials, including the admissible ASC Settlement Agreement. On the other hand, the LSA counsel preparation and hearing costs were lengthened due to Mr. Zang’s objections to the admissible evidence that made the process and proceeding more efficient.
118. On the basis of the foregoing, Mr. Zang is allocated \$10,000.00 of the investigation costs, and \$20,000.00 of LSA counsel preparation and hearing costs.
119. A professional should not have to pay all or a significant portion of the expenses associated with the infrastructure of the hearing. The professional should only be expected to pay those costs discretely associated with the hearing itself (*Charkhandeh* at para. 150). As a result, the per diem hearing expenses of \$2,100.00 are not recoverable against Mr. Zang, because these are associated with the infrastructure of the hearing process. The Court Reporter costs are allocated to Mr. Zang.

¹ Regarding the hourly rate paid by the LSA for investigation and LSA counsel costs, these are notably very low hourly rates.

120. Finally, the costs award must be proportionate to the issues involved, the circumstances of the member, and the overall burden it places on him (*Charkhandeh*, para. 144). Mr. Zang did not make any submissions on appeal regarding the proportionality of costs or his circumstances relevant to the burden of a costs award. The total amount of costs allocated to Mr. Zang of \$36,623.93 is proportionate to the complexity of the issues involved and the general burden it places upon him.

Concluding Matters

121. Mr. Zang shall have one year from the date of this decision to pay the above noted costs in full.

122. The Executive Director shall publish notice of Mr. Zang's suspension pursuant to Rule 107 of the Rules of the LSA (Rules).

123. There shall be no referral to the Attorney General.

124. The record and other hearing materials before the Hearing Committee and Hearing Committee Reports will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor/client privilege pursuant to Rule 98(3) of the Rules of the Law Society of Alberta.

125. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Zang will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 101(3)).

Dated May 11, 2026.

Jim Lutz, KC

Stephanie Dobson, KC

Levonne Louie

Ron Sorokin, KC

Concurring in the Result

(concurring in the result, Erin Runnalls, KC; Grant Vogeli, KC)

126. While we disagree with the reasons of the majority regarding the admission of the ASC Transcripts by the Hearing Committee, we concur with the majority that the appeal should be dismissed and agree with the majority decision on costs.
127. My decision further responds to the dissenting decision that the ASC Settlement Agreement is inadmissible. The ASC Settlement Agreement was properly admitted by the Hearing Committee in accordance with settled evidence law.

Admission of Disputed Evidence by the Hearing Committee

128. Pursuant to section 68 of the *Legal Profession Act*, RSA 2000, c L-8 (*LPA*), a hearing committee “*may* hear, receive and examine evidence in any manner it considers proper [emphasis added]”, and “is not bound by any rules of law concerning evidence in judicial proceedings.” The purpose of this section, as with similar sections in other professional regulation legislation, is to ensure that the LSA can regulate effectively and efficiently in the public interest.
129. The LSA plays an essential role in upholding the rule of law in Alberta by independently regulating the legal profession in this province. To that end, evidence heard, received or examined outside of the bounds of the rules of evidence law should be admitted where the interests of effective and efficient regulation outweigh the LSA’s interest in following the strict rules of evidence law. In other words, the norm should be a principled approach having regard to the rules of law concerning evidence in judicial proceedings, unless there is a reason for admitting other evidence for the sake of effective and efficient regulation.

The ASC Transcripts

130. The Hearing Committee admitted into evidence the transcripts from Mr. Zang’s interviews in the Alberta Securities Commission (ASC) proceedings in their entirety (ASC Transcripts). The Hearing Committee relied upon section 68 of the *LPA* in admitting the ASC Transcripts.
131. Section 6(2) of the *Alberta Evidence Act*, RSA 2000, c A-18 (*Evidence Act*) states that:

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.
132. The ASC Transcripts should not have been admitted into evidence by the Hearing Committee in their entirety, given the prohibition against such use in section 6(2) of the *Evidence Act*. Portions of the ASC Transcript could have been admitted, but only for the limited purpose of putting contradictory evidence to Mr. Zang.
133. The LSA argues that section 6(2) of the *Evidence Act* only applies to sworn evidence. Mr. Zang was sworn in as a witness for both interviews for which the ASC Transcripts were

admitted into evidence by the Hearing Committee.

134. It was not necessary to admit the ASC Transcripts in their entirety for the effective and efficient hearing of this citation against Mr. Zang. Mr. Zang was in fact interviewed by the LSA investigator in this proceeding on December 18, 2019. Any contradictory evidence from the ASC Transcripts could have been put to Mr. Zang during that interview or at the hearing pursuant to the *Evidence Act*.
135. Pursuant to the standard of review set out in *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98 (*Yee*) for reviewing the Hearing Committee's decision, the question of the admission of evidence by a discipline tribunal is a question of law and this Appeal Panel is equally well positioned to the Hearing Committee to make the necessary findings.² The Appeal Panel must have regard to the view of the Hearing Committee that section 68 of the *LPA* applies. However, upon independent examination to ensure uniformity of a principled approach having regard to the rules of evidence law, which in this case is the application of section 6(2) of the *Evidence Act*, and because there was no reason for admitting this evidence for the sake of effective and efficient regulation, I find that the ASC Transcripts in their entirety should not have been admitted by the Hearing Committee.

The ASC Settlement Agreement

136. Mr. Zang argues that the ASC Settlement Agreement was not admissible before the Hearing Committee on the basis that it states in the introduction that it is “[s]olely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 41 and for no other use or purpose, Zang agrees to the facts and consequences set out in this agreement.” Mr. Zang argues that this cannot be saved by the application of section 68 of the *LPA*. The dissenting decision agrees with Mr. Zang.
137. The dissenting decision does agree with the majority that it is settled law that any factual admissions in settlement agreements with a securities regulator are admissible for the truth in subsequent civil proceedings.³ However, the dissenting decision goes on to state that “when such language is present [as quoted in the paragraph above], different considerations are at play that lead to a differing result.”
138. Contrary to the dissenting decision, the settled cases have in fact grappled with similar, if not identical, language to that in Mr. Zang's ASC Settlement Agreement.⁴
139. In Alberta, Justice Ho in *Abel v Modi*, 2020 ABQB 530 found the ASC settlement agreement to be admissible containing the exact same language as Mr. Zang's ASC Settlement Agreement:

Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraphs 73 and 77

² *Yee*, para 35(c)

³ *Fischer v IG Investment*, 2023 ONSC 915, para 194

⁴ *Fischer v IG Investment*, 2023 ONSC 915, para 192

hereof, and for no other purpose, the Respondents agree to the facts and consequences set out in this Agreement.⁵

140. It is a settled rule of law concerning evidence in judicial proceedings in Alberta that any factual admissions in settlement agreements with the ASC (even containing restrictive use language) are admissible in subsequent civil proceedings. There is no principled reason why this evidentiary rule would not equally apply to an LSA hearing as it does in judicial proceedings. This is particularly so when the legislature has made clear in section 68 of the *LPA* that the LSA is not strictly bound by such rules of law concerning evidence in judicial proceedings and may admit other evidence.
141. The dissenting decision would serve to reverse this principle, making the rules of law concerning evidence stricter for the LSA than for the Alberta Courts.
142. Further, on first principles, it is offensive to one's sense of justice and an affront to common sense to prevent the LSA from proving through the admission of the ASC Settlement Agreement that which Mr. Zang has already admitted in a public forum before a statutory body acting in the public interest.⁶ It should be noted that Mr. Zang's ASC Settlement Agreement is published on CanLII at [Re Zang, 2019 ABASC 171](#).
143. I agree with the majority that the ASC Settlement Agreement was admissible and the Hearing Committee made no error in this regard.

Findings re the Citation

144. Having found the ASC Transcripts to be inadmissible, I must consider whether the evidence before the Hearing Committee supports the finding that Mr. Zang acted in his business dealings with K.C. Ltd. in a manner that brought the legal profession into disrepute and that such conduct is deserving of sanction. In doing so, I have regard to the standard of review set out in *Yee* as follows:
 - (a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
 - (b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
 - ...
 - (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,

⁵ *Abel v Modi*, 2020 ABQB 530, para 23. See also, *R v Iyer*, 2014 ABQB 356, para 25.

⁶ *Hill v Gordon-Daly Grenadier Securities*, [2001] O.J. No. 4181 (ON SCDC). See also, *R v Iyer*, 2014 ABQB 356, *National Bank Financial Ltd. v Barthe Estate*, 2015 NSCA 47; *Abel v Modi*, 2020 ABQB 530; *Fischer v IG Investment*, 2023 ONSC 915; *Tietz v Bridgemark Financial Corp.*, 2024 BCSC 1166.

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; ...⁷

145. While the Hearing Committee did not explicitly state where it relied upon the ASC Transcripts in its findings, I disagree with the dissenting decision that “it is not possible for the Appeal Panel to unscramble the evidentiary omelette.” It is in the interests of effective and efficient regulation that the Appeal Committee review the findings of fact, inferences drawn from the facts, findings about what constitutes professional misconduct, and the entire decision and conclusions of the Hearing Committee in accordance with *Yee*. In doing so, I find there is evidence for the findings made by the Hearing Committee without reliance on the ASC Transcripts. On this basis, I find the Hearing Committee’s decision to be upheld.
146. The dissenting decision finds the ASC Transcripts, the ASC Settlement Agreement and the Kilimanjaro Decision to be inadmissible. The dissenting decision sets out that even excluding all of these, four of the five elements of the citation “were probably proven”. I agree with the factual analysis set out at paragraph 59 of the dissenting decision in this regard. Further, on my analysis, these elements are bolstered by the necessary deference to the findings of fact and inferences of the Hearing Committee as well as the admission of the ASC Settlement Agreement.
147. The fifth element of concern is at paragraph 213(e) of the dissenting decision: “Continuing to work with P to achieve artificially inflated values for KCL shares even after Zang knew or ought to have known the conduct was illegal.” The ASC Settlement Agreement states that Mr. Zang breached the securities legislation by “indirectly engaging in a course of conduct that he ought to have known may contribute to an artificial price for the shares of Kilimanjaro”. The admission of the ASC Settlement Agreement is sufficient to prove this element.
148. Although I have addressed this citation in terms of the “elements” as framed in the dissenting decision, it is important to emphasize that there is only a single citation before the Hearing and Appeal Committee: “[i]t is alleged that John C. Zang acted in his business dealings with K.C. Ltd. in a manner that brought the legal profession into disrepute and that such conduct is deserving of sanction.” I concur with the majority that there is ample evidence to support the reasonableness of the finding made by the Hearing Committee that Mr. Zang acted in his business dealings with K.C. Ltd. in a manner that brought the legal profession into disrepute and that such conduct is deserving of sanction.

Costs Award

149. We concur with the majority of the Appeal Panel on costs.

⁷ *Yee*, para. 35

Dated May 11, 2026.

Erin Runnalls, KC

Grant Vogeli, KC

Reasons for Dissent

(reasons for the dissent, Scott Matheson, KC)

150. When another regulator has already disciplined a lawyer for misconduct, and the Law Society lays its own charges, it can be tempting for LSA counsel and the Hearing Committee to simply introduce everything from the first case. Why duplicate effort unnecessarily? But the wholesale admission of material from other proceedings is fraught with pitfalls. It may even breach fundamental rights like the privilege against self-incrimination.
151. In my view, that happened here. The Hearing Committee fell into error in admitting and substantively relying on the compelled ASC interviews, settlement agreement, and decision. While most elements of the citation against Mr. Zang could probably be proven without resort to those documents, one could not, and the Appeal Panel cannot unscramble the evidentiary omelette at this stage. The error is therefore not harmless and the decision should be overturned. Accordingly, for the reasons below, I respectfully dissent.

Self-Incrimination, the *Evidence Act*, and the *Legal Profession Act*

The Legal Profession Act

152. The *Legal Profession Act (LPA)* contains several sections touching on how evidence is received when lawyers are facing discipline. Under section 68, a hearing committee “may hear, receive and examine evidence in any manner it considers proper”, and is “not bound by any rules of law concerning evidence in judicial proceedings.” Members are compellable witnesses, section 69(1), even for incriminating questions, but, with limited exceptions not relevant here, the answers “shall not be used or received against the [member] in any other proceedings.”
153. These provisions have evolved over time. The original *LPA* in 1922 said the LSA would apply the same rules of evidence as civil cases in the Supreme Court of Alberta. That was reversed by amendment six years later to say the LSA was *not* bound by the court’s rules but “may proceed to ascertain the facts in such manner as it deems proper.” This continued until 1966, when the *LPA* was amended to something like its current form, permitting testimony “in such manner as the committee considers proper and the committee is not bound by the rules of law concerning evidence applicable to judicial proceedings.” This was expanded in 1981 and 1990 to include most of the committees

used at the LSA, not just the investigative ones referred to in previous incarnations of the statute.

The Privilege Against Self-Incrimination

154. The privilege's pedigree is long, though it isn't as old as some think. It did not become mainstream until somewhere between 1800 and 1830.⁸ Eventually the privilege was codified, when in 1893 Parliament enacted the first iteration of the *Canada Evidence Act*. But, following similar developments in England, Parliament "determined that the common law approach to the risk of compelled self-incrimination was not the best way of balancing the need for tribunals to have evidence with the interests of those at risk of future punishment."⁹ Instead, Parliament abolished "the privilege against self-incrimination and replace[d] it with a protection against any future use of statements made."
155. This is the key trade-off underlying the privilege and its quasi-constitutional footing. Under this *quid pro quo*, "when a witness who is compelled to give evidence ... is exposed to the risk of self-incrimination, the state offers protection against the subsequent use of that evidence against the witness in exchange for his or her full and frank testimony. If the evidence proffered is less than full and frank, the witness is subject to prosecution for perjury or for the related offence of giving contradictory testimony": *R v Noel*, 2002 SCC 67, paras. 21-22, (Arbour, J), discussing the rationale under both the Evidence Acts and the Charter.
156. Use immunity reflects deep, fundamental principles, namely "the trade-off between the right of the state to compel, under the threat of legal sanctions, the evidence of each and every one of us, under oath, in public, in a court of law, and the need for the state to prove its case without the compelled self-incriminating evidence of the accused. That trade-off, reflected in section 13 of the Charter, is a critical feature of the administration of justice that courts are required to protect and uphold": *ibid*, para. 58. The deal is not just fair, it is good policy, because it helps improve adjudicative accuracy. As Professor Steven Penney put it, albeit in the criminal context:

... witnesses who have committed unlawful acts will often be reluctant to testify truthfully. In many cases, they will rationally perceive that the expected cost of lying (that is, the probability x magnitude of punishment for perjury or giving contradictory evidence) is less than the expected cost of telling the truth (that is, the probability x magnitude of punishment for offences revealed by their testimony).

Prohibiting the state from using witnesses' testimony against them in future proceedings reduces the cost of truth-telling, thereby increasing the likelihood that factually guilty witnesses will testify truthfully. And since many of these witnesses would not have testified truthfully without it, giving them immunity does not deprive

⁸ See generally, John Langbein, "The Historical Origins of the Privilege Against Self-Incrimination at Common Law", 92 *Michigan Law Review* 1047 (1993-1994); Christopher Sherrin, "The Privilege against Self-Incrimination in Regulatory Proceedings: Beginnings (That Never Began)", 30 *Man. L.J.* 315 (2003-2004), pg. 317.

⁹ Peter Sankoff, *Law of Witnesses and Evidence in Canada*, § 17:5, "Statutory Intervention: Restricting Future Use of Incriminatory Statements", Westlaw (online).

the state of much evidence of guilt. The net result is more socially beneficial, reliable evidence than would have been available without immunity.¹⁰

157. In other words, people are more likely to testify truthfully if they know their answers cannot be used against them in the future than they would be if the testimony could be used and expose them to greater punishment, which would increase the incentive to lie. For those put in this position, “there should be no risk attached to being compelled to give incriminating evidence, save to answer to perjury or similar charges”: *Noel*, para. 45.
158. The 1893 federal legislation was followed by the gradual introduction of provincial laws which mirrored its thrust but tinkered with the details, including whether the compelled statements could be used in limited kinds of future circumstances. The first of these statutes in Alberta was the *Act respecting Witnesses and Evidence*, SA 1910(2), c 3. Section 7 contained the archetypal language—the witness may be compelled to answer, but the answer, “shall not be used or receivable in evidence against him in any civil proceeding or in any proceeding under any Act of or Ordinance in force in Alberta.” This clause—about when the compelled response could be admissible in the future—was narrowed and expanded over time. 1931 amendments forbade subsequent use only in a “prosecution under any Act of Alberta.” That remained the law for more than fifty years, during which compelled statements could still be used in subsequent civil proceedings or administrative proceedings that were not “prosecutions”.
159. In 1982, the Alberta Law Reform Institute released a report, “Evidence and Related Subjects: Specific Proposals for Alberta Legislation”. The authors proposed that the *Evidence Act* self-incrimination provisions be amended such that the use immunity would apply in subsequent administrative proceedings, but ALRI “strongly” recommended that the pre-1931 use immunity in subsequent *civil* proceedings should not return. The ALRI felt that as a matter of fairness, civil litigants should be able to use previously compelled statements against the opposing party.
160. The Legislature disagreed. Rejecting ALRI’s draft amendments, Alberta took a firm approach, informed by the introduction of the Charter, expanding the use immunity not just back to what it had been before 1931, but further: barring the introduction of compelled statements in “any other proceedings” whatsoever, whether civil, regulatory, or disciplinary. On May 10, 1985, the then-Attorney General, Neil Crawford, tabled Bill 42, the *Charter Omnibus Act*. During second reading, Mr. Crawford explained that the protection against self-incrimination was one of the key animating principles of the legislation, and he specifically referred to professional discipline proceedings:

Primarily we wanted to address areas like freedom of conscience, the right to be presumed innocent in cases where statutes had offences with reverse onus clauses in them, and the importance of protection against the giving of incriminating testimony. It's of interest that the largest number of statutes amended are amended under the heading of protection against incriminating testimony. The result of those amendments would be that the full guarantee of the right a person has not to testify against himself is really now reflected in all provincial statutes.

¹⁰ “Self-Incrimination Law in the Post-Charter Era - Part III: Compelled Communications, the Admissibility of Defendants' Previous Testimony, and Inferences from Defendants' Silence”, 48 *Crim. L.Q.* 474 (May 2004).

Because of the power of disciplinary bodies to question members of a profession, there are a number of professional statutes where that person may be required to give evidence. Upon Royal Assent of the Charter Omnibus Bill, the law will be that only in cases where a charge is to be laid with respect to perjury or the giving of contradictory evidence would a person's evidence be available to be used against them. That is not seen to be a violation of any right. But in all other circumstances the right of a person not to be required to give evidence that would incriminate him is entirely satisfied. I use the word "incriminate" even though the provincial Assemblies have no jurisdiction over criminal law, because there are penal provisions carried, by way of the potential for fine or imprisonment, in all the provincial statutes I've referred to.

161. Consistent with that purpose, not only was the *Evidence Act* immunity strengthened, but similar use immunity provisions were added to the acts governing architects, accountants, chiropractors, corrections officers, engineers, surveyors, nurses, doctors, optometrists, physical therapists, dieticians, veterinarians...and lawyers, through the inclusion of what is now section 69(2) of the *LPA*. At no point in Hansard was it ever suggested that the *Evidence Act* would not apply to these regulators, even though most or all of them had a statutory provision saying their committees did not have to apply the same rules of evidence as a judicial proceeding. To the contrary: the Attorney-General's statements display an intention to expand rather than contract the reach of the *Evidence Act's* privileges against self-incrimination.
162. Since subsequent Supreme Court decisions found that section 13 of the Charter is only engaged where there are "true penal consequences", which there are not in most non-criminal proceedings, it turned out the *Charter Omnibus Act* extensions were not, strictly speaking constitutionally required, though the Charter is a floor and not a ceiling on the rights of Canadians, so the Legislature was free to set a higher standard. The *Evidence Act* protections were not removed after *R v Wigglesworth*, [1987] 2 S.C.R. 541. As such, the *Evidence Act* still offers potent protection, including to persons in non-criminal proceedings where the Charter does not apply.
163. In addition, in considering the interaction between the *LPA* and the *Evidence Act*, I note that the *LPA* contains several provisions which state that they operate notwithstanding other laws: the *Partnership Act* (s. 8), the *Insurance Act* (s. 99), the *Business Corporations Act* (s. 133), and "any other Act or law" (s. 115). The Legislature understands when and how it should indicate that provisions of the *LPA* trump other laws. Over more than a hundred years of fairly frequent amendment to the *LPA*, the Legislature did not see fit to provide that section 68 operates notwithstanding the *Evidence Act*. Since the *Omnibus Act* in 1985 was amending both the *Evidence Act* and all professional regulatory statutes' provisions on the privilege against self-incrimination, if the Legislature had wanted those regulatory statutes to override the privilege, it would have said so. The statements of the Attorney General suggest this was intentional and the Legislature did not intend for the "not bound by the rules of evidence applicable in judicial proceedings" language from the various professional statutes to trump the use immunities they were entrenching; indeed that would have run counter to the purpose of the *Omnibus Act*.

The Current Form of the Evidence Act, As Applied

164. The *Evidence Act* extends to all "evidence offered or taken" "by or before a court in an action". That would, at first blush, restrict it to court proceedings. Not so. *The Evidence*

Act's definitions give it a sweeping scope: "court" is not just a court. It "includes a judge, arbitrator, umpire, commissioner, judge of the Court of Justice, justice of the peace or other officer or person having by law or by the consent of parties authority to hear, receive and examine evidence". And "action" is likewise defined broadly, to include not just prosecutions for criminal or regulatory offences but any "issue, matter, arbitration, reference, investigation or inquiry", and any "proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Alberta".

165. The *Evidence Act* therefore applies to LSA proceedings, which are held before "other officers or persons" – hearing committees—which under the *LPA* exercise lawful authority to hear, receive, and examine evidence. Pertinent to this appeal, section 6 of the *Evidence Act* codifies the use immunity and trade-off inherent in the privilege against self-incrimination: you have to answer the question, even if inculpatory, but you then have the right not to have the answer given used against you in any other proceedings except in a prosecution for perjury or for the giving of contradictory evidence:

Incriminating questions

6(1) A witness shall not be excused from answering any question on the ground that the answer may tend to incriminate the witness or may tend to establish the witness's liability to prosecution under an Act of the Legislature.

(2) A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

166. Many Alberta administrative tribunals have applied the *Evidence Act*, despite all of their home statutes containing provisions similar to section 68 that say the tribunal need not strictly follow the rules applicable to judicial proceedings. In *Re Al-Ghamdi*, 2017 CarswellAlta 3066, for example, a Hearing Tribunal of the College of Physicians and Surgeons applied section 9 of the *Evidence Act* to exclude a health care quality report, even though under section 79 of the *Health Professions Act*, RSA 2000, c H-7, the Tribunal was not bound by the rules of evidence. (Learned independent counsel to the Tribunal was Ritu Khullar QC, as she then was, now Chief Justice of Alberta). The exclusion was applied despite the fact that the relevant section of the *Evidence Act* was narrow, prevailing only in an "action" and not a "proceeding"—and it was not necessarily clear that the College's disciplinary hearing was an "action". In other words the *Evidence Act* was given a broad and liberal interpretation consistent with its goals and quasi-constitutional underpinnings.
167. The *Evidence Act* has also been applied in a litany of Labour Relations Board decisions by learned arbitrators, at least 15 times, despite the fact s. 14 of the *Labour Relations Code* contains a permissive evidentiary rule similar to section 68 of the *LPA*.¹¹

¹¹ E.g. *U.F.C.W., Local 401 v. Lakeside Feeders Ltd.*, 2006 CarswellAlta 229; *UFCW, Local 401 and RMSI-JTAC Equipment Holdings LP*, 2023 ALRB 6; *Canada Safeway Ltd. v. U.F.C.W., Local 401*, 2004 CarswellAlta 2466; *Canada Safeway Ltd. and UFCW Union, Local 397*, Re 1987 CarswellAlta; *Alberta v. A.U.P.E.*, 1982 CarswellAlta; *Canada Safeway Ltd. and UFCW, Local 401 (Daniel)*, Re 1995 CarswellAlta; *Calgary (City) v. C.U.P.E., Local 38*, 1991 CarswellAlta 941; *Alberta and AUPE (Jerace)*, Re, 2019 CarswellAlta 897; *Retail Clerks Union, Local 401 v. 4 Way Wholesale Ltd.*, 1979 CarswellAlta 685; *Edmonton (City) and Civil Service Union, Local 52*, Re, 2000 CarswellAlta 2294; *Edmonton Telephones Corp. and IBEW, Local 107*, Re, 1992 CarswellAlta 1166; *Alberta Hospital-Edmonton and H.S.A.A.*, Re, 1991 CarswellAlta 987; *Extendicare (Canada) Inc. and CUPE, Local 2639*, Re, 1999

168. The Tribunal from which the disputed documents in this case originate, the Alberta Securities Commission, has itself held the substantive privileges found in the *Evidence Act* apply to its proceedings notwithstanding the permissive evidentiary provisions in the *Securities Act*. In *Re Holtby*, 2012 ABASC 242, an Alberta Securities Commission panel chaired by then lawyer Glenda Campbell QC, as she then was, now a justice of the Court of King's Bench, heard an application requiring the panel to determine whether the *Evidence Act's* protection of spousal privilege applied in ASC proceedings, and again the *Securities Act* contains the looser evidentiary provisions found in section 68 of the *LPA*. Commission counsel made the same arguments LSA counsel makes here (at para. 7):

Staff contend that section 8 of the *Evidence Act* does not apply to administrative enforcement proceedings under the [Securities Act](#). Their rationale includes the arguments that: section 8 of the *Evidence Act* is a general provision that should not trump the specific provisions of [sections 29\(e\) and \(f\)](#) of the *Securities Act*; applying spousal privilege in Commission matters would inhibit Staff's ability to investigate potential breaches of the *Securities Act* "and the ability of a hearing panel to receive relevant evidence in order to efficiently and effectively apply the public interest mandate of the Commission"; and hearing panels retain a discretion as to what relevant evidence to admit in a hearing.

169. The panel rejected those submissions and found the spousal privilege provisions in the *Evidence Act* applied. It began by noting section 1 of the *Evidence Act* *prima facie* covers ASC proceedings, like any other administrative or regulatory hearing, given the definitions quoted above, unless its application is specifically excluded. The decision noted that the *Securities Act's* reference to not having to apply evidentiary rules found in "judicial proceedings" is a narrower concept than that covered by "action" and "court" in section 1 of the *Evidence Act*. We agree with counsel for [the accused] that spousal privilege is a statutory right that broadly applies to all legal proceedings, not just judicial proceedings." (I would say the same of the privilege against self-incrimination). After canvassing the importance and history of the spousal privilege, the panel acknowledge the ASC's policy arguments but concluded (at para. 21):

It is true that Staff's ability to investigate may, at times, be hampered or inhibited by the existence of various privileges invoked by those interviewed or those against whom allegations have been made. However, that is the nature of the concept of privilege, developed by common law, statutory law or both for the purpose of protecting certain information exchanged during the course of certain relationships, including the spousal relationship. Privilege, unlike other rules of evidence, is not intended to assist findings of truth.

170. The Court of Appeal also briefly addressed the application of the *Evidence Act* at the ASC in *Alberta Securities Commission v. Brost*, 2008 ABCA 326. There the appellants challenged the admission of their compelled ASC interviews. But since they were being tendered "in the same regulatory proceedings in which they were obtained", they were not being used in "other" proceedings as defined in section 6 of the *Evidence Act*. The Court of Appeal found that the more specific use immunity provision in section 215 of the *Securities Act* applied, rather than the general protection in section 6 of the *Evidence Act*.

CarswellAlta 2116; *Canada Safeway Ltd. and UFCW, Local 401 (Willis)*, Re, 1996 CarswellAlta 1608; *Hibbert v. International Brotherhood of Boilermakers*, 2025 ALRB 40.

Section 215(2) of the *Securities Act* said, “(2) Where a person gives testimony pursuant to [compelled] questioning referred to in subsection (1), that testimony shall not be admitted in evidence against that person in a prosecution of an offence under section 194 or any other prosecution of an offence under an enactment of Alberta.” Because the statements weren’t being used for a prosecution under s194 or another offence, they were admissible. The Court of Appeal did not suggest the basic provision in section 29 of the *Securities Act*, “the laws of evidence applicable to judicial proceedings do not apply”, would impliedly overrule the *Evidence Act*’s privileges.

171. The *Evidence Act* has also been applied, *arguendo*, by the Court of Appeal in a hearing regarding provisions of the *Police Act*, which contains an evidentiary provision similar to section 68 of the *LPA: Toy v Edmonton (Police Service)*, 2018 ABCA 37. In that case a constable facing a disciplinary charge was compelled to give a sworn, involuntary statement, where he denied certain facts. In a later disciplinary matter he was charged with deceit for having lied in the first proceeding. His counsel, Tamara Friesen, as she then was, now a justice of the Court of Appeal, took the position that section 6 of the *Evidence Act* applied to exclude the first statement from the second proceeding. The Court assumed, without deciding, that the *Evidence Act* applied, but found that the specific language in the *Police Act* about deceit governed the admissibility of the first statement. In any event the Court observed that the use of the statement was not in breach of the *Evidence Act* because, first, it wasn’t an “other proceeding” for the purposes of section 6—it was a follow-on proceeding by the same tribunal for having lied to the first tribunal—and it was a proceeding “for the giving of contradictory evidence” such that the exception in section 6(2) would apply.

Scholarly Treatment of the Evidence Act in Administrative Proceedings

172. The leading authors in the area seem to find it unobjectionable that the *Evidence Act*’s fundamental privileges apply in administrative, regulatory, and disciplinary proceedings even if the home statute contains a provision that the tribunal is not bound to strict rules of evidence. In 1993 Ian Blue called it a “common misconception” that “administrative tribunals are not bound by the rules of evidence.” In fact, they are “required to comply with evidentiary provisions relating to evidence...”¹² Four years later Bernard Adell (Queen’s), took a more nuanced view. He considered that the evidentiary rules in home statutes were intended to be procedural and facilitative, and so gave panels wiggle-room not to strictly apply courtroom evidentiary norms, but they still had to follow substantive statutory provisions of evidence law. There, tribunals must follow the statute’s evidentiary requirements “with respect to provisions designed to protect a relationship or designed to protect a witness’s fundamental rights - in other words, provisions that create a privilege of some sort.”
173. The most thorough treatment of the question of whether a home statute’s “not bound by the rules of evidence” clause trumps the important rights and privileges in the various *Evidence Acts* is found in Chapter 22 of *Practice and Procedure Before Administrative Tribunals*, edited by Robert Macaulay QC, James Sprague QC, and Lorne Sossin, now a Justice of the Court of Appeal for Ontario. The authors’ views align with Adell: tribunals “which have an express statutory freedom from the legal and technical rules of evidence are likely free from many of these restrictive provisions. At least to the extent that the

¹² Ian Blue, “Common Evidentiary Issues before Administrative Tribunals and Suggested Approaches”, 14 *Advoc. Q.* 385 (January 1993).

restrictive provisions are procedural in nature— and not substantive.” You must, therefore, in considering whether a restrictive rule in an *Evidence Act* applies, determine first whether it “goes to a matter of substance rather than procedure.” If it does, “the express statutory freedom in the agency’s enabling statute does not operate to exclude it.”¹³ As such, the “freedom of agencies from evidentiary rules does not free agencies from aspects of evidentiary rules which are not “procedural” in nature but which are substantive matters (matters such as solicitor/client privilege, crown immunities, rules respecting weight of evidence, presumptions, etc.).”

174. That analysis is easy in this case: the privilege against self-incrimination is a substantive right, indeed a principle of fundamental justice: see e.g. *R. v. S. (R.J.)*, [1995] 1 SCR 451, *R. v. White*, [1999] 2 S.C.R. 417, *R. v. Jarvis*, [2002] 3 S.C.R. 757, *R. v. Henry*, 2005 SCC 76, *R. v. J.J.*, 2022 SCC 28. Where testimony is compelled, that has been “invariably linked with evidentiary immunity”: *Application Under s. 83.28 of the Criminal Code, Re*, 2004 SCC 42, para. 70.
175. The Majority states that *McDonald v. Law Society of Alberta*, 1993 CanLII 724 (ABQB) and *Pearlman v. Law Society of Manitoba*, 1991 CanLII 26 (SCC) are authority for the proposition that previously compelled statements are admissible in professional discipline. With the greatest of respect, that is not the ratio of either case. Neither *McDonald* or *Pearlman* even discuss the *Evidence Act*. Rather, those cases deal with objections based on section 13 of the Charter. I acknowledge, and agree with the Majority, that under *Wigglesworth* the Charter provisions do not protect members here because they do not face true penal consequences as defined in the jurisprudence.

The Admissibility of Settlement Agreements

176. It is commonplace, in some areas of regulation, for plea bargains to be accompanied by negotiated restrictions on the future use of the admissions contained in the plea. Here, for example, Mr. Zang’s settlement with ASC stated, “solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 41 and for no other use or purpose, Zang agrees to the facts and consequences set out in this agreement.” The question of whether this language prevents the admission of the agreement in subsequent civil litigation and criminal prosecution has been a matter of debate.
177. In *Hill v Gordon-Daly Grenadier Securities et al.*, (2001), 2001 CanLII 28015 (ON SC), 56 OR (3d) 379 (Ont SCJ), aff’d 56 OR (3d) 388 (DivCt), the Ontario courts found similar agreements could be introduced in class actions against the persons who signed the agreements and made the admissions. The Divisional Court found it would be “offensive to one’s sense of justice and an affront to common sense to prevent the plaintiff from proving, on a motion to certify a class proceeding, that which the defendants have already admitted in a public forum before a statutory body acting in the public interest.”
178. In *Moyes v. Fortune Financial Corp.*, 2002 CarswellOnt 1532, Justice Nordheimer took a different approach. He began with the principle that, discussions and agreements with respect to settlement are generally inadmissible in any subsequent proceeding...” In the Court’s view, *Hill* was an unjustified departure from that general rule. He noted that the panel in *Hill* cited no authority “for why the privilege, that would otherwise attach, should

¹³ Ss. 22:13, “Application of the Various Evidence Acts”.

not attach to a settlement agreement just because the settlement is reached in a proceeding before a "statutory body acting in the public interest". He observed:

If the principle behind the privilege is to encourage settlement, then presumably the objective is to encourage settlement of all disputes whether they be criminal, civil or regulatory. It is not difficult to foresee the chilling effect that will occur to discussions involving settlements of regulatory or criminal proceedings if settlement agreements reached in those proceedings were to automatically become admissible in subsequent civil proceedings. ...

The rationale offered for the exception by the Divisional Court's decision, that is, the apparent offence to someone's sense of justice from the existence of the privilege, is one that would appear to arise regardless of the nature of the proceedings being settled. If the inadmissibility of a settlement of a regulatory proceeding in a subsequent civil proceeding creates this affront, why is it not equally created by the inadmissibility of the facts behind a finding, or plea, of guilt in a criminal proceeding in a subsequent civil case or the inadmissibility of an admission of liability through the settlement of one civil case in another civil case involving the same subject matter?

179. Nonetheless Justice Nordheimer found himself bound by *Hill*. And *Hill*'s reasoning was subsequently followed by the Nova Scotia Court of Appeal in *National Bank Financial Ltd. v Barthe Estate*, 2015 NSCA 47, and by the Court of King's Bench of Alberta in *Abel v Modi*, 2020 ABQB 530 (Ho, J, as she then was). The courts of Ontario and B.C. now consider the point "settled law": *Fischer v. IG Investment*, 2023 ONSC 915; *Tietz v Bridgemark Financial Corp.*, 2024 BCSC 1166, and it is likewise entrenched in Alberta and Nova Scotia.
180. A similar question arose in *R v Iyer*, where the accused claimed that the agreement could not be used by the prosecution. The Court succinctly dismissed that submission noting that the ASC, which derives its authority from the provincial Crown, cannot bind the federal Crown in the exercise of its criminal law power: 2014 ABQB 356 (Moen J).
181. None of these decisions address whether and when a settlement agreement containing language along the lines quoted can be used in a subsequent proceeding by a different regulator. I located only one which considered the question, *Rymar v. Law Society of Upper Canada*, 2017 ONLSTH 187, a case about a paralegal who had pleaded to securities offences, but, critically in my view, the plea contained no restrictions along the lines at issue here about the use to which it could be put in the future.
182. I would suggest that when such language is present, different considerations are at play which lead to a differing result. In particular, both the ASC and the LSA derive their authority from the provincial Crown. Both institutions wield prosecutorial power to bring and continue charges in furtherance of their statutory public interest objectives. Those counsel can negotiate plea bargains that include the usual *quid pro quo* regarding what will be admitted and what will not. And the people agreeing to those deals must be able to trust the word of the prosecutors that the terms of the bargain reached will be adhered to. "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled": *Santobello v. New York*, 404 U.S. 257. Put another way, there is an inevitable element of inducement in the terms of these agreements, including the

proviso that the admissions can't be later used against the signatory. The answer in the Majority that the ASC cannot bind a subsequent regulator outside its sphere of authority is therefore inapt for two reasons. First, it reduces the promises of the first prosecutor to nothing, despite their obligation to act in the public interest. Second, the first counsel's promises do not in fact unduly "bind" the second regulator. The LSA is no worse off. It can prosecute Zang and collect whatever evidence it wishes. All that the first prosecutor's agreement does is say that later regulators may not stand on the ASC's shoulders. That is within the ASC's prerogatives.

183. Underlying the offense "to one's sense of justice" identified in *Hill* is the fact that there the Plaintiffs were the victims of the Defendants' conduct admitted in the agreement. They were not party to the agreement and had no ability to contest it. They may not have the resources to re-litigate it. To require victims to re-prove admitted facts in court is both unfair and a waste of time and judicial resources.
184. That is not the case when one provincial regulator wants to use the admissions another provincial regulator has by careful pressure extracted, in breach of the first regulator's promise. The prosecuting counsel in both cases have the same source of ultimate authority. And requiring a regulator to go to the normal effort of proving its case does not raise the same fairness concerns that the *Hill* court saw in forcing victims to litigate a class action. *Hill* is particularly inapposite here since Zang had no clients and there are no identified victims in the record.
185. As Justice Nordheimer observed, there is no principled reason to depart from the normal rule that settlement agreements may be *prima facie* privileged, and if their own terms stipulate that they may not be used, there must be proven unconscionability or a recognized exception to the privilege necessary to justify departing from the terms agreed to. In my view, settlement agreements with another provincial regulator that include explicit restrictions on their later use are not admissible in subsequent proceedings brought by another provincial regulator against the same person.

Use of Prior Decisions To Which the Accused Was Not Party

186. The LSA fairly admits on appeal that the ASC decision is prejudicial to Mr. Zang: transcript, pg. 173, lines 20-23. It nevertheless argues the ASC decision was admissible, relying on *Law Society of Ontario v Daley*, 2024 ONLSTH 106 and *Chartered Professional Accountants of Alberta v Ironside* (unreported) (Accounting Discipline Tribunal). See also *Saskatchewan v. Phillips*, 2021 SKCA 16, and the Majority agrees.
187. Again with the greatest of respect, the authorities do not support the conclusion. In all of them, the member *actively participated in the previous hearing* that led to the decision sought to be admitted. Without the accused person's participation in the first hearing it is unfair and prejudicial to admit the resulting decision in the second. I acknowledge that section 68 of the *LPA* may permit the admission of the ASC decision since that does not infringe a substantive, fundamental right of Mr. Zang, but a principled (if flexible) approach to the rules of evidence still requires that, as a matter of fairness, the decision can only be considered for the limited purposes proposed by the LSA.

Standard of Review

188. I agree with and adopt the Majority's description of the standard of review set out in *Yee*,

including that “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” and “the appeal tribunal may also intervene in cases of procedural unfairness” (para. 35). The evidentiary issues are both questions of law arising from the interpretation of section 68 of the *LPA* and matters of procedural fairness.

189. Yee counsels that the Appeal Panel is “equally well-positioned” in these matters, which means a low level of deference to the Hearing Committee. The review for procedural fairness asks whether the proceeding below was fair, having regard to the context and the level of fairness required by the *LPA* and the common law. While courts have shied away from calling this “correctness” review, it is less deferential than reasonableness.

The LSA’s Investigation

190. In mid-2014 Mr. Zang became involved in a business venture with a company called Kilimanjaro. The ASC eventually opened an investigation into Kilimanjaro, and the LSA became aware of it in October 2017 when the ASC published a Notice of Hearing. The LSA’s initial allegations against Mr. Zang were that:
- a. Mr. Zang wittingly or unwittingly facilitated an improper purpose by facilitating the share transfer in the United States after the Cease Trade Order was issued in Alberta.
 - b. Mr. Zang acted in a discourteous/uncivil manner and, in bad faith, towards the ASC.
191. On November 13, 2017, the LSA issued an Investigation Order directing Mr. Zang to “produce to the investigator all Alberta Securities (ASC) Commission material disclosed to you and/or your counsel by the ASC in relation to [Zang’s] matter” within seven days. Mr. Zang complied by sending the ASC the demand. The LSA then appears to have put its investigation on ice while the ASC proceeding played out. Two years later, in late 2019, a conference call was held between the ASC and the LSA investigator. Mr. Zang reached a negotiated Settlement Agreement with the ASC on November 17, 2019. The bulk of the 47-paragraph Settlement Agreement, from paragraphs 11-34, is an agreed statement of facts, but the document also contains other components, including a restriction on its use: “solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 41 and for no other use or purpose, Zang agrees to the facts and consequences set out in this Agreement.” The ASC accepted the agreement and published it, 2019 ABASC 171.
192. Having pleaded-out, Mr. Zang did not participate in the eleven-day hearing against the remaining accused, which led to a lengthy decision reported at *Re Kilimanjaro Capital Ltd.*, 2021 ABASC 14. In December 2019, a conference call was held between the LSA and ASC, and in March 2020, even though Mr. Zang and the ASC had reached a plea bargain, the ASC sent the LSA providing a “letter outlining [its] concerns” about Mr. Zang’s conduct in the ASC proceedings and various applications and litigation, along with a “timeline they constructed specific to Zang.” See Exhibit 11, Investigation Report. The LSA investigation re-started.
193. “Investigation” may be an overstatement. The LSA did not gather any primary

documents from their authors or interview any witnesses as far as I can discern, apart from Mr. Zang. Instead the ASC provided 5.3gb of 16,229 pages of selected material they had collected in their investigation, including the transcripts of two compelled interviews Mr. Zang sat for in 2014 and 2015. Although section 44 of the *Securities Act* mandates that the ASC's investigation report, "including all transcripts of evidence and material" is "absolutely privileged and is not admissible in any action, proceeding or prosecution," the ASC not only provided the 16,229 pages described but its investigator, Mr. Tocco, provided a "timeline they constructed specific to Zang" attaching the "key fact documents" gathered during their investigation and provided it to the LSA in March 2020, after Mr. Zang had already settled. The ASC was at that point a complainant to the LSA, alleging Mr. Zang had acted improperly in the ASC proceedings and associated litigation.

194. I would pause to observe that the Hearing Committee did not consider whether the s.44 "absolute privilege" attached to the ASC materials provided in March 2020, although it is arguable that the investigator's timeline and attachments are a "report" under that section. It also seems plausibly contrary to the spirit of the settlement for the ASC to, immediately after it is inked, have an investigator compile a bespoke package of inculpatory material to send to another regulator, making a complaint that Mr. Zang had litigated too zealously.
195. The LSA investigator then "copied" the ASC's key facts, correcting only for "tense, format, etc." Mr. Zang's settlement agreement was also provided, having been published online. I do not suggest there is anything necessarily improper in the LSA handling the matter this way, using the fruits of another investigation rather than re-doing it. That may in certain cases be efficient and effective. But the limitations of this approach become relevant when we come to the evidentiary problems with the case.
196. In any event, the LSA investigator concluded there was evidence Mr. Zang wittingly or unwittingly facilitated an improper purpose, but insufficient basis to prove the allegation he acted improperly in the ASC proceedings. At some point the citation was refined. The record does not reflect whether that happened before or after the Conduct Committee directed it to hearing. The citation no longer referred to facilitating an improper purpose, but, instead, said, "it is alleged that John C. Zang acted in his business dealings with K.C. Ltd. in a manner that brought the legal profession into disrepute and that such conduct is deserving of sanction."
197. At the hearing, LSA counsel called only one witness, the investigator, and sought to enter several exhibits through him. That included his investigation report, which contained the compelled ASC interview transcripts. LSA counsel also sought to introduce the settlement agreement and ASC decision, though it averred that the ASC decision would be tendered only for the limited purpose of showing the outcome of that hearing for the other individuals charged. Zang objected on various grounds. The Hearing Committee admitted all of it.
198. I take no issue with the Committee's rejection of Mr. Zang's hearsay arguments—the rule against the reception of hearsay is not a substantive right or privilege or a principle of fundamental justice, so section 68 of the *LPA* permits the Committee to receive hearsay—nor its rejection of the submission that section 13 of the Charter applies. The jurisprudence is clear that members in professional discipline are not facing "true penal consequences", see *R. v. Wigglesworth*.

The Hearing Committee's Use of The Transcripts, ASC Decision, and Settlement Agreement

199. The Hearing Committee made extensive use of the compelled interviews, ASC decision, and Settlement Agreement. It is, admittedly, hard to tell which piece of evidence the Hearing Committee was relying on for each fact found and recited in the Merits Decision, because the pertinent parts, paragraphs 64-100, contain few pinpoint citations to the record.
200. *The interview transcripts.* For the reasons expressed above, the Committee should not have admitted the compelled interviews. They fell squarely within the plain text of section 6 of the *Evidence Act*. The LSA hearing was an “other proceeding” and was not a prosecution for perjury or for the giving of contradictory evidence to the ASC. The privilege against self-incrimination is a substantive right, a principle of fundamental justice, which section 68 of the *LPA* does not permit the LSA to ignore. To interpret section 68 otherwise would read-in “notwithstanding any provision of the Evidence Act” contrary to a hundred years of legislative history that the elected branches intentionally chose not to do include such a clause, and ignoring the fact that the *LPA* elsewhere contains several other that the *LPA* operates notwithstanding other legislation. It would also depart from the firm conclusions of the ALRB, the College of Physicians and Surgeons, and the ASC, all of whose statutes have provisions similar to section 68, that the *Evidence Act* applies (at least in respect of substantive rights) in their hearings. And as a matter of principle it would simply be unfair, given the quasi-constitutional nature of the right.
201. Such a reading would also gut the use immunity the LSA provides to *its* members in section 69, for virtually all regulatory statutes contain a provision akin to section 68. Can the LSA really argue that the use immunity promised to lawyers is worth so little that any future regulator is not bound by it and can use the compelled testimony for any purpose? The statutory assurance of use immunity is not a mere technicality. It is a safeguard, rooted in long tradition. Such assurances should not lightly be set aside in the name of convenience.
202. I would also note that the LSA's expansive reading of section 68, that the Hearing Committee is not bound *at all* by the rules of evidence, even important principles like the protection against self-incrimination, would lead to the result that other fundamental privileges do not apply, including the right of members to solicitor-client privilege over their communications with the lawyer they've hired to defend them. In *Lavallee v. Alberta (Securities Commission)*, 2010 ABCA 48, the Court of Appeal, interpreting a provision of the *Securities Act* which said, “the laws of evidence applicable to judicial proceedings do not apply”, observed that it would be an “absurd consequence” to read this language to compel the admission of solicitor-client privileged material, which “would be contrary to the special position occupied by solicitor-client privilege, which has been described as a “principle of fundamental justice, and a civil right of supreme importance that forms a cornerstone of our judicial system.” That remark is, in my view, equally true of reception of evidence contrary to the privilege against self-incrimination.
203. To the extent the LSA argues that the “specific” sections in section 68 override section 6 of the *Evidence Act*, relying on *Toy* and *Brost*, those cases do not support such a conclusion. As noted above, *Toy* was a proceeding for the giving of contradictory

evidence in the same chain of disciplinary actions, and so was not caught by section 6 at all, and likewise in *Brost* the statements were to be used in the same proceeding. I would also note that section 68 is not “more specific” in the sense the Court of Appeal meant in *Brost*, where there was a particular, granular rule in the *Securities Act*.

204. *The settlement agreement.* The terms of the deal could not have been clearer. They were negotiated as part of the give and take of plea bargaining with another regulator. Mr. Zang was effectively induced to sign that deal by the inclusion of that term. In this case there was not merely the spectre of potential future discipline by the LSA—he was well aware, before November 2019, that the LSA was investigating, such that the contractual restrictions on future use were made for that specific purpose as part of the bargain with the ASC.
205. The Committee made reference to the Settlement Agreement, although resort to it was not strictly necessary, because the Agreed Statement of Facts contained nearly all the same facts contained in the Settlement Agreement. What was present in the Agreement but not the ASF was the legal conclusions and admissions thereto, that Mr. Zang had breached the *Securities Act* by:
- c. Directly or indirectly engaging in an act or course of conduct in furtherance of the sale of Kilimanjaro shares, following the issuance of the CTO, by... obtaining a legal opinion from a United States attorney which enabled Kilimanjaro shares to be deposited with COR and sold in the United States;
 - d. Indirectly engaging in a course of conduct that he ought to have known may contribute to an artificial price for the shares of Kilimanjaro by... loaning funds to Kilimanjaro that he ought to have known would be used by [P] and/or Kilimanjaro to finance the Promotional Campaign;
 - e. Engaged in conduct contrary to the public interest by... failing to identify and adequately respond to suspicious circumstances surrounding the management, business operations, and promotional activities of Kilimanjaro.
206. These are legal conclusions. The LSA had the benefit of the facts contained in the ASF and to the limited extent “re-litigation” was required it was only legal argument about the implications of the facts agreed, for instance whether the National Policy instrument meant that the activities to trade in the face of the CTO were in fact unlawful.
207. The chilling effect identified in *Moyes* is particularly strong when the person involved in the first proceeding knows there is a risk of a second action by a different regulator, as Mr. Zang here knew in respect of the LSA waiting in the wings during the ASC process. The admission of these agreements will disincentivize negotiated resolutions even when they are in the first regulator’s interest, and the public’s interest generally. To the extent that admission in a subsequent proceeding has been justified on the basis of an efficiency rationale, this disincentive drastically diminishes that efficiency since it will lead to more people facing the first prosecution taking it to hearing rather than settling. I would observe that there have been several Supreme Court of Canada cases elucidating the purpose for, and exceptions to, settlement privilege. None of these have recognized the exception in *Hill*.
208. *The ASC decision.* Mr. Zang was said to be barred by either issue estoppel, res judicata,

or abuse of process from challenging the admission and use of the admittedly-prejudicial ASC Decision. But Mr. Zang was not a party to the Decision, since he had settled before the hearing. He had no opportunity to contest the facts found there. It is not “re-litigating” if you didn’t litigate the first time. That is one reason why non-mutual offensive issue estoppel is problematic, see *Toronto (City) v. C.U.P.E. Local 769*, 2003 SCC 63—particularly where the party trying to use the previous decision for estoppel purposes is has a public prosecutorial role (like the LSA) and the past decision was likewise a public prosecution (as with the ASC). That is inconsistent with the prosecutor’s role as a party who represents the public interest: para. 31.

209. The use of estoppel or abuse of process doctrines without mutuality can create unfair results. Imagine a criminal prosecution of two men for robbery. One pleads guilty immediately and admits only the essential facts that he attended and stole the money. The second goes to trial and a written decision is issued saying that, during the robbery, the men beat a guard. If the guard sues for his injuries, it is inconceivable that the decision could be used against the first man, who had no ability to contest the facts. Without mutuality there is no “re-litigation”, but simply the normal opportunity for the person who never got to litigate to do so.
210. Mr. Zang also convincingly argued that the Hearing Committee did not in fact abide by its own stated restrictions on the use of the ASC decision. The LSA on appeal rightly conceded that: transcript, pg. 142, lines 21-26. The Committee relied on the ASC decision for more than just evidence of the outcome of that hearing, including on one critical point: whether Mr. Zang knew that the Kilimanjaro share price was, through the efforts of the stock promotion, “artificially inflated”—that is, untethered from the company’s underlying value. This is an essential element of the charge, given the nature of the alleged “pump and dump” scheme. There is no “pump” if the price reflects Kilimanjaro’s value. Mr. Zang argued, and I agree, that the only evidence of the “pump” was the ASC decision, at which expert evidence was heard regarding the value of Kilimanjaro, which Mr. Zang had no opportunity to rebut or contest. The Committee relied on the ASC decision in this respect, both outside the purpose for which the LSA tendered it and beyond the bounds permitted since Mr. Zang was not a party at the ASC hearing and had no chance to challenge the allegation that Kilimanjaro’s share price was inflated (or that, if it was, he was aware of it).
211. In addition, the Hearing Committee made use of the ASC decision in finding that it was unlawful for Mr. Zang to “move the shares to a US company to gain access to an OTC exchange (which would be contrary to ASC admissions and findings in related proceedings) [i.e. the ASC decision]”. Where the Hearing Committee relied on the ASC decision to prove Mr. Zang acted unlawfully in respect of the CTO, that was unfair and beyond the scope of the purpose for which the exhibit was tendered. Finally, it appears, though it is not clear since the Committee did not use pinpoint citations, that the Committee relied on the ASC decision in coming to its conclusions regarding the inaccuracy of the SCA and Questionnaire.
212. In my view admission of the Decision may have been justified, under section 68 of the *LPA* and principles of judicial economy, for the narrow, limited purpose proposed by the LSA: to prove the outcome against the other parties to the ASC proceeding. But the Hearing Committee’s substantive use of the Decision to prove disputed facts or legal conclusions against Zang was unfair, since he had not participated in the previous hearing. The Majority cites no authority in which a previous decision where the person

did not participate in the hearing has been admitted by a second prosecutor and subsequently used against the person, on the basis of issue estoppel or abuse of process, and I am not aware of any.

213. Was the substantive use of these documents harmless, because the existing record would have been sufficient to make out the citation? There were five elements to the charge (in the Committee's view), see para. 3 of the Merits Decision. While four of these were probably proven even without the evidence I would not have admitted, given the way the Decision is written it is not possible to be certain, and one element, regarding the "artificially inflated value" of Kilimanjaro, could only have been proven by reference to the ASC transcripts and decision:

a) Taking P's direction to incorporate a U.S. company to avoid the CTO;

This was very likely proven even if the evidence to which I have objected had been admitted. The first portion of the allegation, regarding Mr. Zang taking Mr. [P]'s direction to incorporate the U.S. company, is admitted in the ASF, and in Zang's interview with the LSA, see Exhibit 10, pg. 887-88. The second part, about doing this to "avoid the CTO", was admitted in the interview, pg. 887-888. Moreover, Mr. Zang admits, in his supplemental appeal brief, paras. 19-21, that he did this to avoid the CTO. He just says it was not unlawful. I note this defence, relying on National Policy 12-203, *Cease Trading Orders*, was not addressed by the Committee in its decision. The Committee relied on the ASC decision as authority for the illegality of the conduct, and on the admission in the Settlement Agreement that obtaining the U.S. legal opinion breached s. 93.1 of the *Securities Act*.

b) Signing the fake SCA and misleading questionnaire;

This was likely proven without the evidence I would not have admitted. The ASF provides the essential background. The SCA and questionnaire were in evidence. Mr. Zang gave testimony about them. The fact that the SCA and questionnaire were "fake" or "misleading" would probably have been found without the other material, but the Committee referred at length to evidence from the ASC interviews and ASC decision in coming to this conclusion

c) Misrepresenting the true state of KCL shares in the U.S. company;

This element overlaps with the last, since the "misrepresenting" was done through the SCA and questionnaire.

d) Giving P unfettered access to Zang's personal and corporate accounts to trade shares;

This was very likely proven without the objectionable evidence. Zang giving [P] access to his trading accounts is admitted in the ASF, though the use of the word "unfettered" is an exaggeration since there was a professional broker intermediary between [P] and the account.

e) Continuing to work with [P] to achieve artificially inflated values for KCL shares even after Zang knew or ought to have known the conduct was illegal.

The first part of this, that he continued to work with [P] to achieve artificially inflated values for KCL shares, was not capable of being proven on the record without, at minimum, a few words in the Settlement Agreement (“he ought to have known may contribute to an artificial price...”). Even if that had been admissible, that short phrase was not sufficient to prove that Zang loaning the money to [P] for stock promotions did contribute to a move in the price or that the price was artificially high. Indeed the Agreement itself says that “Zang played no role in the Promotional Campaign and Staff’s investigation did not uncover any evidence that Zang was aware of the contents of the promotional material that formed part of the Promotional Campaign.” The Committee must have relied on the ASC decision, and the ASC interviews at pgs. 1079, 1097, 1086, as the only evidence that the Kilimanjaro shares in fact had an artificially inflated value. The second phrase, “even after Zang knew or ought to have known the conduct was illegal” cannot be proven on this record either, except, by resort to the few words quoted above from the Settlement Agreement, and the ASC decision.

214. In my view the Hearing Committee’s evidentiary rulings incorrectly interpreted section 68 of the *LPA* and its interaction with the *Evidence Act*, and the associated common law rules described above regarding the decision and the settlement agreement, and the admission of these materials was procedurally unfair.

Conclusion

215. Administrative tribunals like the Hearing Committee below are rightly afforded flexibility in receiving evidence, but section 68 of the *LPA* does not extend to overriding substantive privileges designed to protect fundamental rights and to preserve confidence in the fairness of the regulatory process. Applying the standard of review set out in *Yee*, because the Hearing Committee relied on evidence that should not have been admitted, and because the error was not harmless, I would allow the appeal, set aside the finding of misconduct, the sanction, and the cost award, which in my view does not accord with *Charkhandeh*. With the greatest of respect for the Hearing Committee and my colleagues on the Appeal Panel, I dissent.

Dated May 11, 2026.

Scott Matheson, KC