Court of Appeal for Saskatchewan

Docket: CACV3371

Citation: *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114

Date: 2023-10-13

Between:

Peter V. Abrametz

Appellant
(Applicant)

And

Law Society of Saskatchewan

Respondent
(Respondent)

Before:	Leurer C.J.S. and Barrington-Foote J.A.
Disposition:	Appeal allowed in part
Written reasons by:	The Honourable Mr. Justice Barrington-Foote
In concurrence:	The Honourable Chief Justice Leurer
On appeal from:	Hearing Committee, Regina, sentence appeal remitted under *Law Society v Abrametz*, 2022 SCC 29
Appeal heard:	June 12, 2019
Counsel:	Gordon Kuski, K.C., and Amanda Quayle, K.C., for the Appellant Alyssa Tomkins, Paul Daly and Charles Daoust for the Respondent

Barrington-Foote J.A.

I. INTRODUCTION

[1] On January 10, 2018, a Hearing Committee of the Law Society of Saskatchewan [LSS], found the appellant, Peter V. Abrametz, guilty of four counts of conduct unbecoming a lawyer [Conduct Decision], based on breaches of the Law Society of Saskatchewan Rules [Rules] and the *Code of Professional Conduct* [*Code*]. On January 18, 2019, the Hearing Committee released its decision penalizing Mr. Abrametz for his misconduct [Penalty Decision], ordering that he be disbarred without the right to apply for readmission as a lawyer prior to January 1, 2021 and pay costs in the amount of $58,645.24 [Costs Award].

[2] Mr. Abrametz appealed the following four decisions of the Hearing Committee:

(a) the Conduct Decision;

(b) the Penalty Decision;

(c) the Hearing Committee's August 20, 2016 decision denying his application to adjourn or stay the disciplinary proceedings pending the conclusion of a related investigation of potential tax evasion [Adjournment Decision]; and

(d) the Hearing Committee's November 9, 2018 decision denying his application to stay the proceedings [Stay Decision].

[3] In *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81 [*Abrametz CA*], this Court allowed Mr. Abrametz's appeal of the Stay Decision, and ordered that the proceedings be stayed and that the Penalty Decision and Costs Award be set aside. In *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, 470 DLR (4th) 328 [*Abrametz SC*], the Supreme Court of Canada allowed the LSS appeal of *Abrametz CA* and remitted the matter to this Court to address the outstanding appeals of the Penalty Decision and the Adjournment Decision. Mr. Abrametz also seeks an order setting aside the Costs Award in the discipline proceedings, costs of the appeal of the Penalty Decision and the Stay Decision, and costs of the application to stay the order disbarring him until the hearing of this appeal.

[4] This judgment deals with the outstanding issues remitted to this Court by *Abrametz SC*. I have concluded that the Penalty Decision, including the Costs Award, should be set aside and that those matters should be remitted to the Hearing Committee. My reasons follow.

II. BACKGROUND

A. The Conduct Charges and Penalty Decision

[5] In *Abrametz SC*, Rowe J. summarized the subject matter of the LSS investigation that resulted in the convictions on four counts of professional misconduct of which Mr. Abrametz was found guilty, as follows:

> [6] In 2012, the Law Society commenced an audit investigation of Mr. Abrametz's financial records due to apparent irregularities in the use of a trust account. On the eve of a visit by investigators to his office in December 2012, Mr. Abrametz self-reported to the Law Society that he had failed to promptly deposit more than $36,000 in fees into his office account.
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> [7] The Law Society's investigation related to eight transactions by Mr. Abrametz. In seven of these, Mr. Abrametz had issued cheques to clients that were then endorsed by the clients and cashed by Mr. Abrametz. In the other case, he had issued three cheques to a fictitious person, endorsed that false name on the cheques and cashed them. In addition, Mr. Abrametz had on 11 occasions advanced money to clients, relating to settlement funds, charging them a flat 30 percent fee of the amount advanced, as well as a 30 percent contingency fee, and interest.

[6] Based on the results of an initial review by LSS auditors of Mr. Abrametz's records in December of 2012 and January of 2013, and admissions made and the records provided by Mr. Abrametz at that time, a Notice of Intention to Interim Suspend was prepared in January of 2013 and served on Mr. Abrametz on February 5, 2013. However, that potential suspension was short-circuited by a March 14, 2013 agreement between Mr. Abrametz and the LSS that enabled him to continue practising under supervision as the investigation, prosecution and appeals proceeded. That agreement was described in *Abrametz CA* as follows:

> [15] As it happened, Mr. Abrametz was not suspended. On March 14, 2013, he signed an undertaking [undertaking] in which he agreed, as a condition of continuing his practice, that he would retain an approved member of the LSS [supervisor] at his own cost, to oversee and monitor his practice and trust account activities. A senior Prince Albert lawyer agreed to act in that capacity. Among other things, Mr. Abrametz was required to add his supervisor as a co-signer on his trust accounts and to meet his supervisor at least monthly to review a list of his open files. The supervisor would oversee all aspects of Mr. Abrametz's trust transactions and would be required to approve all withdrawals to be made or cheques to be drawn on Mr. Abrametz's trust account. Mr. Abrametz also agreed

> to get prior approval of any agreements, including retainer agreements, assignments, advances, and other financial arrangements, and to provide various financial records to LSS auditors monthly, and to his supervisor.

[7] The LSS investigation resulted in seven charges being laid against Mr. Abrametz on October 13, 2015 [Charges] under a variety of provisions that governed the conduct of LSS members. The Hearing Committee found Mr. Abrametz guilty of four of those Charges, which were as follows:

(a) Charge 1 was for breach of LSS Rule 942(3), which required that trust funds for the payment of fees, disbursements or other expenses be withdrawn by a cheque payable to the member's general account. On seven occasions, Mr. Abrametz issued cheques to clients that were then endorsed by the clients and cashed by him. In this way, Mr. Abrametz received payments for his benefit without the funds having been first deposited in his law office general account. Mr. Abrametz self-reported these transactions on the eve of the investigatory audit and acknowledged at the conduct hearing that he had failed to comply with the applicable Rule.

(b) Charge 2 was also for breach of Rule 942(3). Mr. Abrametz issued three cheques drawn on his trust account to a fictitious person – being a name that his family had jokingly used to refer to him in the past. Those payments also resulted in the diversion of funds to Mr. Abrametz, enabling him to personally receive payments that were "off the books".

(c) Charge 4 was for the creation of records relating to the transactions that were the subject of Charges 1 and 2, which did not accurately reflect aspects of those transactions, including the fact that legal fees had been paid to Mr. Abrametz personally rather than to his law firm.

(d) Charge 5 was for breaches of provisions of Chapter VI of the *Code* that related to conflicts of interest which prohibited lawyers from entering into a debtor-creditor relationship with their clients. Those transactions were described as follows in *Abrametz CA*:

> [46] As to [C]harge 5, the Hearing Committee found that Mr. Abrametz had advanced money to clients and charged them a 30% flat fee of the amount advanced in addition to his usual 30% contingency fee. Mr. Abrametz did not deny those transactions had occurred but characterized them as advances rather than loans. There were many such advances — 128 in 2010 for a total of $55,145.36, a total of $45,306.00 in 2011, and more in earlier years. Mr. Abrametz also argued these advances did not constitute a business transaction with a client within the meaning of Chapter VI of the relevant version of the Code, which formed part of the Rules.

[8] The Penalty Decision that resulted from these convictions, and the Costs Award, were summarized in *Abrametz CA*, as follows:

> [61] …The Penalty Decision was issued January 18, 2019. The Hearing Committee stated that it had adopted the following principles to guide it in the imposition of an appropriate order (at para 5):
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> > i) Sentencing ranges for similar offences;
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> > ii) The member's disciplinary history;
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> > iii) Admissions of guilt;
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> > iv) Applicable mitigating factors;
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> > v) The length of any interim suspension or practice supervision prior to the penalty being imposed and the impact of the interim suspension or supervision on the member's practice;
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> > vi) The member's conduct during the suspension or period of supervision prior to penalty being imposed; and
> >
> > vii) The impact the member's behaviour has had on the reputation of the legal profession and the need for protection of the public.
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> [62] The Hearing Committee noted that Mr. Abrametz and Conduct Investigation Committee [CIC] counsel had very different views of the appropriate penalty. Mr. Abrametz suggested a two-month suspension, while the CIC sought disbarment. The Hearing Committee reviewed 15 penalty decisions to illustrate sentencing ranges, which included suspensions, resignations — which the Hearing Committee considered equivalent to disbarment — and disbarments. It acknowledged Mr. Abrametz's lack of a disciplinary history but rejected the argument that the self-report was mitigating, noting that he did not plead guilty and presented evidence which was intended to discount or avoid culpability for what he did. The Hearing Committee concluded that Mr. Abrametz had shown a lack of understanding of, and remorse for, his conduct.
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> [63] As to mitigating factors, the Hearing Committee noted that Mr. Abrametz was 69 years old and had practiced without an instance of discipline for nearly 40 years when the investigation commenced. It rejected his argument that delay in the audit investigation and disciplinary proceedings was mitigating, concluding "the Committee does not agree that the investigation and discipline process has been unreasonably lengthy", as "the stages of the proceedings were complex, protracted and pointedly adversarial throughout" (at para 26).
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> [64] The Hearing Committee acknowledged that Mr. Abrametz had been under practice supervision since March 14, 2013, but found the supervision was not overly restrictive. It noted he consented to those provisions and found he had "tendered no compelling evidence

that his practice [had] been negatively impacted" (at para 28) or that the length of time he was under supervision warranted a reduction in his penalty.

[65] The Hearing Committee stated there was no evidence of issues or complaints about Mr. Abrametz's conduct during the period of his supervision. It found letters of support from his practice supervisors to be of assistance. A letter from his supervisor commented as follows:

> There have been absolutely no issues which raised any concerns with us after Mr. Abrametz was able to familiarize himself with our views and requirements. He has conducted himself in a fully appropriate fashion.

[66] The Hearing Committee found that the 21 additional letters of support from community members, colleagues, clients and friends of Mr. Abrametz to be of limited assistance. As to the impact of Mr. Abrametz's behaviour on the legal profession, the Hearing Committee commented that it could "only speculate on the actual impact" (at para 31). It found that it was aggravating that Mr. Abrametz had involved "members of the public to assist him in carrying out his deceitful acts" (at para 33). It characterized his behaviour as having struck "a blow against the fundamental principles of the legal profession's code, namely; honesty, trustworthiness and protection of the public" (at para 33). The Hearing Committee noted that Mr. Abrametz is a very recognizable member of the Prince Albert legal community and that his conduct had drawn media attention. It concluded — in part in reliance on his many letters of support — that Mr. Abrametz was closely and prominently associated with the public's perception of the legal profession in the Prince Albert region.

[67] Finally, the Hearing Committee found that the circumstances in *Law Society of Saskatchewan v Oledzki*, 2009 SKLSS 4 [*Oledzki*], affirmed [*Oledzki v. Law Society (Saskatchewan)*] 2010 SKCA 120, 362 Sask. R. 86 (Sask. C.A.); *Law Society of Upper Canada v. Dyer* [2004 CarswellOnt 11354 (L.S.U.C. Hearing Panel)], 2004 CanLII 50938; Tilling, Re, 2015 SKLSS 1 (Sask. L.S.H. Comm.); *Law Society of Saskatchewan v Duncan-Bonneau*, 2015 SKLSS 6 [*Duncan-Bonneau*]; and *Law Society of Upper Canada v. Aguirre*, 2009 ONLSHP 23 (L.S.U.C. Hearing Panel) [*Aguirre*], were most closely analogous to those in Mr. Abrametz's case. Each of those cases resulted in either disbarment or a resignation in the face of discipline which the Hearing Committee found to be equivalent to disbarment. It found, taking account of public protection, maintaining public confidence, general deterrence and specific deterrence that a suspension would be inadequate. In the result, it disbarred Mr. Abrametz and prohibited him from applying for re-admission prior to January 1, 2021.

[68] The CIC also sought recovery of $102,629.18 in costs. In this context, the Hearing Committee referred to Mr. Abrametz's complaint against Mr. Huber as having resulted in further costs to retain outside counsel. It also referred to that complaint as "consistent with the obstructive behaviour of the Member throughout the investigation" (at para 46). After concluding it should not further punish Mr. Abrametz through the imposition of "the overwhelming and unusual costs in this case" (at para 47), it awarded costs of $58,645.24 as partial indemnity which took account of the fact there was divided success.

B. The Adjournment Decision

[9] On March 28, 2016, Mr. Abrametz applied pursuant to s. 47(1) of *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1, [*LPA*] for an order staying the disciplinary hearing proceedings

against him until the investigation of the allegation that he had obtained payments in the manner specified in Charges 1 and 2 to avoid paying tax was concluded. That tax investigation, which had been part of the broader investigation that led to the Charges from January of 2013, was continuing while the prosecution of the Charges proceeded. The Adjournment Decision disposed of this application.

[10] In the Adjournment Decision, the Hearing Committee noted that counsel for Mr. Abrametz had conceded that the relief he sought was better described as an adjournment. It concluded that it had the authority under Rules 450(2) and 450(7) to adjourn a hearing from time-to-time and to determine the practice and procedure to be followed during a hearing. However, it also held that it had no authority to grant the relief sought, for the following reason:

> [20] The Committee finds however that the Member's request for an indefinite adjournment is not one authorized by s. 48(7) of the Act or contemplated by Rules 450(2) and 450(7) particularly when observed in light of the Committee's legislated obligation to proceed with hearing a Formal Complaint pursuant to s. 48(2)(a) of the Act.

[11] Section 48(2)(a) of the *LPA*, which has since been repealed, provided as follows:

> 48(2) A hearing committee shall:
>
> (a) hear the formal complaint with respect to which it is appointed

[12] Despite having found that it had no jurisdiction to grant the relief sought, the Hearing Committee dealt with the other arguments advanced by Mr. Abrametz. It disagreed with his assertion that failing to adjourn the proceedings would breach his right to a fair hearing, as it would, among other things, deny him the ability "to put his case squarely before the Committee" (at para 24). The Hearing Committee's reasoning on this point was as follows:

> [26] This Committee cannot accept the Member's assertions in this regard. The Member has not been charged with any offence relating to his personal or business tax records. As acknowledged by Counsel for the CIC in his written submissions at paragraph number 18, "the Law Society does not have the evidence it needs to advance such allegations".
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> [27] The Member is therefore not required to put a case squarely before this Committee to defend conduct for which he has not been charged. Should the existing charges be substituted, amended or added to as permitted by s. 48(5) of the Act, the Member will be afforded a reasonable opportunity to mount a full and proper defence to such substituted, amended or additional charges.

[13] Mr. Abrametz had also argued that Charges 1 through 4 were factually and legally intertwined with the tax investigation, and if the proceedings were not stayed and further charges

were recommended by the Conduct Investigation Committee, there would be a bifurcation and a multiplicity of proceedings. The Hearing Committee disposed of this argument as follows:

> [32] This is not a situation where proceeding with hearing of the Formal Complaint would bifurcate proceedings. Further charges may never be recommended by the CIC. Similarly, the CIC may choose to not proceed with further investigation, irrespective of the Member's cooperation into the investigation of possible income tax evasion.
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> [33] The Member's alleged conduct enumerated in the Formal Complaint is not inextricably linked to the investigation that may, or may not, continue by the CIC in regard to the Member's income tax reporting.

[14] Mr. Abrametz had also argued that he would be denied the benefit of the totality principle, and thus prejudiced, if he was charged with and found guilty of further offences. The Hearing Committee agreed that it was common practice to increase penalties for subsequent offences and that the totality principle applied, but concluded that his argument was premature, reasoning as follows:

> [36] The Committee is of the opinion however that the Member's argument in this regard is premature. There has been no finding of conduct unbecoming against the Member and there are no parallel proceedings underway or contemplated. Should the Member be found in breach of the Act or Rules in regard to one or more of the charges in the Formal Complaint, then the Member would be free to make the arguments of progressive discipline and sentencing totality should the CIC recommend additional charges and should the member be found guilty of such additional charges.

[15] Similarly, the Hearing Committee rejected Mr. Abrametz's contention as premature that he would be prejudiced in respect of costs if he was found guilty of conduct unbecoming as a result of other charges arising from the tax investigation. It explained that conclusion as follows:

> [37] …Should the Member's conduct be found unbecoming on one or more of the charges in the Formal Complaint then the Member is not prevented from arguing prejudice in respect of award(s) of costs should the CIC recommend further charges that are then proven on the evidence.

[16] Finally, the Hearing Committee rejected Mr. Abrametz's argument that the LSS would not be prejudiced by an adjournment, as he had practised under conditions since March 14, 2013 and presented no risk to the public. It reasoned that the public and the profession have an interest in the timely resolution of disputes and that Mr. Abrametz faced serious charges. It said that it had the authority to adjourn proceedings from time-to-time but only if there was "a cogent reason to do so" (at para 41). It noted that there was no indication Mr. Abrametz would provide further

disclosure if an adjournment was granted, and that he had resisted demands for disclosure of his tax records. For that reason, it held as follows:

> [44] It is insincere for the Member to suggest that that the hearing of charges against him should be delayed until the CIC investigation has concluded when the conclusion of the investigation is entirely dependent upon the Member's refusal to disclose certain accounting records in his possession.

III. STANDARD OF REVIEW

A. Standard of review: the Sentencing and Costs Decisions

[17] This is a statutory appeal brought pursuant to s. 56(1) of the *LPA*. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the Supreme Court of Canada held that "where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision" (at para 37). Where the issue on appeal is whether the administrative decision maker has made an error of law, the correctness standard applies. If the issue is whether there has been an error of fact or of mixed fact and law, the palpable and overriding standard applies.

[18] *Vavilov* left no room for debate on this point, absent legislative direction to the contrary. Thus, it is not only unnecessary but inappropriate to conduct a contextual analysis of the legislation to determine the standard of review. Further, the relative expertise of the administrative decision-maker is no longer a relevant consideration in determining the standard of review (*Vavilov*, at para 31). As to the significance of existing case law relating to the standard of review on a statutory appeal, *Vavilov* confirmed that "[a] court seeking to determine what standard is appropriate in a case before it should look to these reasons first in order to determine how this general framework applies to that case" (at para 143). Three decisions of this Court, *MacKay v Law Society of Saskatchewan*, 2021 SKCA 99 [*MacKay*], *Merchant v Law Society of Saskatchewan*, 2022 SKCA 2 at para 29 [*Merchant 2022*] and *Strom v Saskatchewan Registered Nurses' Association,* 2020 SKCA 112, 453 DLR (4th) 472 [*Strom*] have interpreted and applied *Vavilov* in contexts that are relevant to this appeal.

[19] In *MacKay* this Court confirmed that *Vavilov* means that the appellate standards of review now apply to appeals under s. 56(1) of the *LPA*, and that as a result, the standard of review will

depend on the issue and on the nature of the question posed on appeal. *MacKay* also affirmed that the appellate standards of review are those set out in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235. This reasoning was affirmed in *Merchant 2022* at paragraph 29.

[20] However, neither *MacKay* nor *Merchant 2022* considered whether the standard of review that is applied on appeals of discretionary decisions [Discretionary Standard] applies in certain cases. Nor did they consider *Strom*. In that case, this Court concluded that the Discretionary Standard is also an appellate standard of review and that it accordingly applied to an appeal as to whether a Discipline Committee of the Saskatchewan Registered Nurses Association had erred in finding Ms. Strom guilty of professional misconduct. A Hearing Committee determining the sanction to be imposed on a lawyer, or awarding costs, is deciding a mixed question of fact and law that involves the exercise of discretion.

[21] I observe that courts in some provinces have – despite recognizing the direction in *Vavilov* to apply the appellate standards to statutory appeals – continued to apply pre-*Vavilov* case law relating to the standard of review where the appeal relates to a sentencing decision by a professional regulator: see, for example, *Ontario (College of Pharmacists) v Mourid*, 2023 ONSC 1221; *Watson v Law Society of Ontario*, 2023 ONSC 1156; *Goetz et al v The Corp. of the Municipality of South Bruce*, 2022 ONSC 4388 at paras 34–35. In *Dhalla v College of Physicians and Surgeons of Manitoba*, 2022 MBCA 7, Cameron J.A., having thoroughly canvassed the continued use of pre-*Vavilov* case law in this context, declined the invitation to introduce the criminal standard of review on sentencing appeals. She concluded that the Discretionary Standard generally applied by the Manitoba Court of Appeal should continue to apply absent direction to the contrary by the Supreme Court of Canada or a five-person panel of the Manitoba Court of Appeal.

[22] Here, Mr. Abrametz submits that we should follow *Strom* and apply the Discretionary Standard in relation to his appeals of both the Costs Award and the Penalty Decision. The LSS, on the other hand, citing *Vavilov*, contends that the appropriate standard of review is what it calls “the highly deferential standard of palpable and overriding error”. As matters now stand in Saskatchewan, Mr. Abrametz is correct, and the LSS in correct in part. That is a result of the clarification of the standard of review applicable on an appeal of a discretionary decision that

began with *Strom*, and continued in *Kot v Kot*, 2021 SKCA 4, 63 ETR (4th) 161 [*Kot*], *MacInnis v Bayer*, 2023 SKCA 37 [*MacInnis*] and *Stromberg v Olafson*, 2023 SKCA 67 [*Stromberg*].

[23] Prior to *Strom*, the formulation of the discretionary standard that had generally been applied in Saskatchewan was that specified in *Rimmer v Adshead*, 2002 SKCA 12, [2002] 4 WWR 119, where Cameron J.A. held that an appellate court could only intervene if the decision-maker erred in principle, misapprehended or failed to consider material evidence, failed to act judicially, or reached a decision so clearly wrong that it would result in an injustice. *Strom* noted that both this and other courts have also used different language to describe the Discretionary Standard, including the Supreme Court of Canada in *Penner v Niagara Regional Police Services Board*, 2013 SCC 19, [2013] 2 SCR 125 at para 27 [*Penner*], and *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371 [*Okanagan*].

[24] In *Kot*, this Court adopted the language used in *Penner* and *Okanagan*, describing the Discretionary Standard as permitting intervention in the following circumstances:

> [20] …[A]ppellate intervention in a discretionary decision is appropriate where the judge made a palpable and overriding error in their assessment of the facts, including as a result of misapprehending or failing to consider material evidence. Appellate intervention is also appropriate where the judge failed to correctly identify the legal criteria which governed the exercise of their discretion or misapplied those criteria, thereby committing an error of law. Such errors may include a failure to give any or sufficient weight to a relevant consideration.

[25] This statement has been frequently applied by this Court: see, for example: *McStay v Berta Estate*, 2021 SKCA 51, 458 DLR (4th) 106; *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd*., 2022 SKCA 38 at para 37; *Suderman v Yakubowski-Suderman*, 2022 SKCA 87 at para 71; and *Larocque v Yahoo*, 2023 SKCA 63 at para 42.

[26] In *MacInnis* and in *Stromberg*, the Court returned to this issue, and described the Discretionary Standard in the manner provided in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 [*Housen*], which applies to *all* appeals absent legislative direction to the contrary: see *Imperial Manufacturing Group Inc. v Décor Grates Inc*., 2015 FCA 100 at paras 18–29, [201] 1 FCR 246 [*Imperial Manufacturing*] and *Hospira Healthcare Corp. v Kennedy Institute of*

Rheumatology, 2016 FCA 215 at paras 66–79 [*Hospira*]. In *MacInnis*, this Court summarized the Discretionary Standard as follows:

> [38] …Although it is often said that discretionary decisions are entitled to deference, the fact is that an alleged error by a court in arriving at a discretionary decision is subject to appellate review in accordance with the appellate standards of review specified in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235. As is always the case, the standard of review depends on the nature of the error alleged, not the type of decision that was made. The standard of review in relation to alleged errors of law is correctness, where no deference is called for. An appellate court may intervene in a discretionary decision if there has been an error of law, including an error in the identification or application of the legal criteria that govern the exercise of the discretion: "Such errors may include a failure to give any or sufficient weight to a relevant consideration" (*Kot v Kot*, 2021 SKCA 4 at para 20, 63 ETR (4th) 161).
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> [39] An appellate court may also intervene if there has been a palpable and overriding error of fact or of mixed fact and law: see also, for example, *676083 B.C. Ltd. v Revolution Resource Recovery Inc.*, 2021 BCCA 85 at para 30, 49 BCLR (6th) 101; *Ernst & Young v Koroluk*, 2022 SKCA 81 at paras 25-26; *Finkel v Coast Capital Credit Union*, 2017 BCCA 361 at para 55, 2 BCLR (6th) 300; *AIC Limited v Fischer*, 2013 SCC 69 at para 65, [2013] 3 SCR 949 [*Fischer*]; and *Lewis v WestJet Airlines Ltd.*, 2022 BCCA 145 at paras 30-31, 468 DLR (4th) 713. However, an appellate court is not entitled to substitute its own decision for that of the judge merely because it would have exercised the discretion differently: *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 at 76-77.

[27] In *Stromberg*, the majority affirmed this reasoning, and also made the following observations as to the nature of a discretionary decision:

> [119] …[T]he Federal Court of Appeal adopted the *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235, standards of review where the appeal is of a discretionary, interlocutory order in *Decor Grates Incorporated v Imperial Manufacturing Group Inc.*, 2015 FCA 100 at paras 14-29, [2016] 1 FCR 246. As Stratas J.A. commented in that case, "Discretionary orders, such as the one in issue in this case, are the result of applying law to the facts of particular cases — in other words, they are questions of mixed fact and law" (at para 18). I agree. The description of a decision as discretionary is best understood as a shorthand statement that the legal principles that govern the decision [are] such that they contemplate more than one potential outcome, based on the application of the judgment of the court with the authority to find the facts and apply those principles. That may be so, for example, because there are a number of factors that may or may not properly be found to apply on the facts, the weight that may properly be accorded to different factors, or the nature of a governing principle.

[28] These principles apply to Mr. Abrametz's appeals of the Penalty Decision and the Costs Award. This Court may only intervene if there has been a material error of law by the Hearing Committee, as to the identification or application of the legal criteria that governed the exercise of its discretionary authority – "or as to another matter of law on which the decision depended, which would in turn have an impact on the legality of the discretionary decision" (*Stromberg* at para 121).

It may also intervene if the Hearing Committee made a material error of fact or of mixed fact and law.

[29] For the sake of clarity, I would make two brief observations. First, *MacInnis* and *Stromberg* do not mean that *Kot* no longer applies. An appellate court can intervene in the circumstances described in *Kot*, provided that an error has been made based on the standard of review that applies to the alleged error. A failure to accord any or sufficient weight to a relevant factor, for example, may constitute or result from an extricable error of law, or a palpable error of mixed fact and law. A misapprehension of evidence sometimes rises to the level of an error of law, reviewable on the correctness standard, or may result from a palpable error of fact.

[30] Second, *Kot*, *MacInnis* and *Stromberg* do not use language such as "failed to act judicially, or reached a decision so clearly wrong that it would result in an injustice" to describe the Discretionary Standard. Rather, they describe the discretionary standard in accordance with *Housen*. In *Imperial Manufacturing*, Stratas J.A. suggested that "a decision that is so clearly wrong that it resulted in an injustice is another way of saying that there has been an obvious error that affects the outcome of the case — in other words, palpable and overriding error" (at para 23). I agree. Even if there may be other ways to explain the meaning of this kind of language, Stratas J.A.'s explanation demonstrates the important point that shorthand descriptions of this kind of the Discretionary Standard can be reconciled with the appellate standards – and for the sake of clarity and consistency, should be. The same is true of the phrase "failed to act judicially", which I would understand as referring to a breach of procedural fairness.

B. Palpable and overriding error: reviewing the evidence

[31] In light of the grounds of appeal advanced by Mr. Abrametz and the direction provided by *Abrametz SC*, it is useful to emphasize the extent to which an appellate court can review the evidence where the issue is whether there has been a palpable and overriding error of fact or mixed fact and law. In *Abrametz SC*, Rowe J. held that this Court had departed from its proper role by substituting its own findings of fact, "notably as to the scale and complexity of the investigation" and as to the fact that Mr. Abrametz had stopped cooperating in the investigation (at para 114).

Rowe J. did so on the basis of the following description of the respective roles of the Hearing Committee and the Court:

> [113] One must ask, under a deferential standard of review, is this what appellate courts are called on to do? The "primary role" of the Hearing Committee was "to weigh and assess voluminous quantities of evidence": *Housen* , at para. 18. An appellate court is not free to interfere with factual conclusions merely because it disagrees with the weight to be assigned to the underlying evidence: para. 23; *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352; *Hydro-Québec v. Matta*, 2020 SCC 37, at para. 33. An error is *palpable* if it is plainly seen and if all the evidence need not be reconsidered in order to identify it, and is *overriding* if it has affected the result: *Hydro-Québec* , at para. 33; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at paras. 55-56 and 69-70; *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729, at para. 33.

[32] These principles reflect the deferential standard of review applied where the issue on appeal is a finding of fact or of mixed fact and law. However, that does not mean that an appellate court is not entitled to review the evidence for the purpose of determining whether an administrative decision maker has erred. It is not only entitled, but obliged to do so, to the extent called for by a ground of appeal that alleges that such an error has been made, within the limits of the appellate function.

[33] This principle is confirmed by *Housen*. As Iacobucci and Major JJ. there wrote, the proposition that "a court of appeal should not interfere with a trial judge's reasons unless there is a palpable and overriding error…is sometimes stated as prohibiting an appellate court from reviewing a trial judge's decision *if there was some evidence upon which he or she could have relied to reach that conclusion*" (at para 1, emphasis added). As they also said, the role of an appellate court is "to review the reasons in light of the arguments of the parties *and the relevant evidence*" (at para 4, emphasis added). The appellate role in this context extends to inferences. As they explained:

> [22] …[I]t is open to an appellate court to find that an inference of fact made by the trial judge is clearly wrong, we would add the caution that where evidence exists to support this inference, an appellate court will be hard pressed to find a palpable and overriding error. As stated above, trial courts are in an advantageous position when it comes to assessing and weighing vast quantities of evidence. In making a factual inference, the trial judge must sift through the relevant facts, decide on their weight, and draw a factual conclusion. Thus, where evidence exists which supports this conclusion, interference with this conclusion entails interference with the weight assigned by the trial judge to the pieces of evidence.
>
> [23] We reiterate that it is not the role of appellate courts to second-guess the weight to be assigned to the various items of evidence. If there is no palpable and overriding error with respect to the underlying facts that the trial judge relies on to draw the inference, then

> it is only where the inference-drawing process itself is palpably in error that an appellate court can interfere with the factual conclusion.
>
> (Emphasis added)

[34] In *Abrametz SC*, Rowe J. made the point that an error cannot be palpable if all of the evidence needs to be "reconsidered" in order to identify it, citing *Hydro-Québec v Matta*, 2020 SCC 37 at para 33, 450 DLR (4th) 547. An appellate court cannot *reconsider* the evidence to determine if it would have weighed it differently or made different findings of fact or mixed fact and law. However, as I have explained, it not only can, but must, *review* the evidence to the extent necessary to determine if the evidence could support the finding at issue on the appeal. That may, depending on the nature of the issue and the evidence, require it to review all of the evidence. How else, for example, would it be possible to determine if there was no evidence to support the conclusion that has been challenged?

C. Standard of review: the Adjournment Decision and procedural fairness

[35] Mr. Abrametz submits that the appeal of the Adjournment Decision is to be reviewed on the correctness standard. In the alternative, he says the reasonableness standard applies. The LSS contends that the standard of review is reasonableness.

[36] For the reasons explained above, the standard of review that applies to the appeal of the Adjournment Decision does not depend on the fact that it is related to the refusal to grant an adjournment. Rather, the standard of review in relation to the errors alleged by Mr. Abrametz to have occurred turn on whether they relate to questions of law, fact or mixed fact and law. Mr. Abrametz submits that the Hearing Committee committed a variety of errors. He contends that it erroneously concluded that it lacked the authority to grant the relief he sought, as a result of having misinterpreted s. 48(7) of the *LPA*. That is an allegation of an error of law. The standard of review in relation to that issue is accordingly correctness.

[37] Mr. Abrametz also submits that the failure to grant the application resulted in a breach of the duty of procedural fairness. In *Vavilov*, the Court did not decide the standard of review to be

applied to either judicial or appellate review based on that ground. In *Abrametz SC* Rowe J. did so in the context of a statutory appeal, finding as follows:

> [27] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Court held that when the legislature provides for a statutory appeal mechanism from an administrative decision maker to a court, this indicates that appellate standards are to apply: paras. 33 and 36-52. While this proposition was stated in the context of substantive review, the direction that appeals are to be decided according to the appellate standards of review was categorical. Thus, where questions of procedural fairness are dealt with through a statutory appeal mechanism, they are subject to appellate standards of review.
>
> [28] This does not depart from *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, and *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, as those decisions related to judicial review and to the granting of prerogative writs….
>
> [29] This case is a statutory appeal pursuant to *The Legal Profession Act, 1990*. Therefore, the standard of review is correctness for questions of law and palpable and overriding error for questions of fact and of mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse*), 2021 SCC 43, at paras. 24-25.

[38] Justice Rowe also confirmed that the question of whether there has been an abuse of process is a question of law, reviewable on the correctness standard, and that abuse of process in administrative proceedings is a question of procedural fairness. In my view, it follows that *Abrametz SC* stands for the proposition that the correctness standard applies on a statutory appeal whenever it is alleged that there has been a breach of procedural fairness, and not only when the issue is whether there has been an abuse of process that amounts to such a breach: *Deokaran v Law Society of Ontario*, 2023 ONSC 1702 at para 21; *Manitoba Métis Federation Inc. v Canada (Energy Regulator)*, 2023 FCA 24 at para 36; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 46; *Canada v Bowker*, 2023 FCA 133 at para 16; Paul Daly, *Future Directions in Standard of Review in Canadian Administrative Law: Substantive Review and Procedural Fairness*, loose-leaf (2023-2) (Toronto: Thomson Reuters) Can J Admin L & Prac at 69.

[39] As is apparent from Côté J.'s dissent, the decision to apply the appellate standards of review where the issue of procedural fairness arises on appeal, rather than in a judicial review, raises interesting questions. In Fredrick Schumann, Case Comment: *Law Society of Saskatchewan v Abrametz*, Can J Admin L & Prac at 385, the author suggests that *Abrametz SC* represents a material change from the standard identified in *Canada (Citizenship and Immigration) v Khosa*,

2009 SCC 12, [2009] 1 SCR 339, and *Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 [*Khela*]. In his view, "[t]he material difference between the two approaches is that, under *Khela*, the entire procedural fairness decision, including factual and discretionary aspects, is reviewed on a correctness standard, but, under *Abrametz SC*, questions of fact receive significant deference by way of the palpable and overriding error standard". Professor Daly makes essentially the same point in *Future Directions in Standard of Review*, suggesting that "applying the appellate standards of review to procedural fairness questions will require future courts to draw distinctions between questions of law (subject to correctness review) and questions of fact and mixed fact and law (subject to review for palpable and overriding error), distinctions which have not heretofore been made in procedural fairness cases". Although this comment is entirely understandable, it is nonetheless my view that the fact that the standard of review when the issue is whether there has been a breach of procedural fairness is correctness must mean that something more than that the decision maker must correctly *identify* the legal test for procedural fairness. Rather, the ultimate question of whether the facts meet that legal test must also be reviewable on the correctness standard, rather than being treated as a mixed question of fact and law reviewable on the palpable and overriding error standard.

[40] It is not necessary for the purpose of this appeal to more fully explore these questions, including as to where the line should be drawn between the ultimate question of whether the facts meet the legal test of fairness and other mixed questions of fact and law. As I understand *Abrametz SC*, this Court must decide whether the facts found by the Hearing Committee that are not the product of palpable error, together with any other undisputed facts, mean that the refusal to grant an adjournment resulted in a denial of procedural fairness. For the reasons explained below, I am not persuaded that it did, regardless of whether this ultimate question is reviewed on the correctness or the palpable and overriding error standard.

IV. DID THE HEARING COMMITTEE ERR IN REFUSING THE ADJOURNMENT APPLICATION?

[41] The decision as to whether to grant Mr. Abrametz's adjournment request engaged the duty of procedural fairness. The Hearing Committee was accordingly obliged to undertake a contextual enquiry – that is, to decide whether fairness required an adjournment in light of all of the

circumstances. In *Vavilov* the majority explained why that is so, noting the non-exhaustive list of factors described in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 that are relevant in this context, as follows:

> [77] ...The duty of procedural fairness in administrative law is "eminently variable", inherently flexible and context-specific: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 22-23; *Moreau-Bérubé*, at paras. 74-75; *Dunsmuir*, at para. 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker*, at para. 21. In *Baker*, this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker*, at paras. 23-27; see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at para. 5. ...

[42] In *Markwart v Prince Albert (City)*, 2006 SKCA 122, 277 DLR (4th) 360, Lane J.A. cited Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Canvasback Publishing, 1995) at 108–109, for the proposition that "the basic question is whether an adjournment was required in order to ensure that the individual concerned had a reasonable opportunity in all the circumstances to present proofs and arguments to the decision-maker, and to answer the opposing case" (at para 33). Lorne Sossin, Robert W. Macaulay, and James L.H. Sprague, *Practice and Procedure Before Administrative Tribunals*, loose-leaf (August 2023) (Toronto: Thomson Reuters, 1991) (WL) at 16:126 [*Sossin et al*.] makes essentially the same point, suggesting that "the test in considering a stay where there were concurrent proceedings underway [is] whether to proceed would give rise to a real risk of prejudice or injustice" also citing, *Howe v Institute of Chartered Accountants of Ontario* (1994), 121 DLR (4th) 149 at 155 (Ont Div Ct) [*Howe*], aff'd (1995), 25 OR (3d) 96 (CA)).

[43] It must be kept in mind, however, that the fact that refusing an application to adjourn, or adjourning on different terms than those requested by the applicant, may impact their ability to present their case and respond to the opposition, is not the only potentially relevant consideration. In *Law Society of Upper Canada v Igbinosun*, 2009 ONCA 484, 96 OR (3d) 138, which was relied

upon by both the LSS and Mr. Abrametz, the Ontario Court of Appeal noted the following non-exhaustive list of circumstances that may be relevant to an adjournment request:

> [37] …Factors which may support the denial of an adjournment may include a lack of compliance with prior court orders, previous adjournments that have been granted to the applicant, previous peremptory hearing dates, the desirability of having the matter decided and a finding that the applicant is seeking to manipulate the system by orchestrating delay. Factors which may favour the granting of an adjournment include the fact that the consequences of the hearing are serious, that the applicant would be prejudiced if the request were not granted, and a finding that the applicant was honestly seeking to exercise his right to counsel, and had been represented in the proceedings up until the time of the adjournment request. In weighing these factors, the timeliness of the request, the applicant's reasons for being unable to proceed on the scheduled date and the length of the requested adjournment should also be considered.

[44] This passage recognizes that, in undertaking the requisite contextual enquiry, the decision maker is entitled to take account of the fact that the actions of the party seeking the adjournment may have caused or increased the possibility of prejudice to the applicant, the decision maker, the profession or members of the public, whether in the form of cost, delays, the loss of evidence, or otherwise. The same is true of the following list of factors that may bear on such a decision as set out by Donald J.M. Brown et al. in *Judicial Review of Administrative Action in Canada*, loose-leaf (2023) (Toronto: Thomson Reuters, 2009) (WL) at 9:79:

> [F]airness does not necessarily require that an adjournment be granted. Rather, the existence of related proceedings, and the possible harm that might be caused to an individual if an adjournment were refused, is only one factor that a tribunal should take into consideration in the exercise of its discretion. It may also take into account such factors as: the length of the postponement required; the extent to which members of the public would be put at risk, or the purposes of the statutory scheme undermined, if the administrative proceedings were temporarily stayed; the closeness of the relationship between the issues to be decided in the different proceedings; the seriousness of the other proceedings; and the extent to which either the publicity of the administrative proceeding, or the requirement to answer questions and produce evidence, might prejudice the individual's right to a fair trial of a criminal charge, or to a fair civil trial.
>
> (Footnotes omitted)

[45] The submissions of both parties relating to this ground of appeal take account of this legal framework. Mr. Abrametz contends that there are several key factors that warranted an adjournment. He points out that the potential consequences to him were serious, which tends to enhance procedural fairness requirements, and that he had applied promptly after the LSS chose to bring the Charges while continuing the investigation. He argues that the ongoing investigation was inextricably intertwined with Charges 1 through 4, with the result that he was prejudiced by the failure to grant an adjournment. He suggests that this prejudice would have included bifurcated

and duplicative proceedings, which would, in turn, result in additional costs to him and indeed, may result in a second award of costs against him.

[46] Mr. Abrametz also submits that he could be prejudiced by the application of the principles of progressive discipline and totality if he is sentenced on the Charges and is later sentenced separately for additional closely related charges resulting from the tax investigation. That could result in greater punishment. Indeed, he contends that the Penalty Decision demonstrates that this prejudice has already occurred, in that the Hearing Committee found that his failure to provide a satisfactory explanation for the conduct that formed the subject of Charges 1 through 4 weighed against him. He also argues that the public interest would not have been compromised by further delay, as the Charges were already stale dated, and that he had practiced under conditions without incident, with the result that there was no evidence of a risk to the public.

[47] Mr. Abrametz further avers that the Hearing Committee erred by making the following specific findings in the Adjournment Decision:

> (i) that Mr. Abrametz's request was for "an indefinite adjournment";
>
> (ii) that the relief was not contemplated by Rules 450(2) and 450(7);
>
> (iii) that proceeding with the hearing on the seven charges would not deny the Member an opportunity to respond to the allegations against him;
>
> (iv) that Mr. Abrametz was not required to put a case before the Hearing Committee in respect of the ongoing investigation because he did not need to defend conduct for which he had not been charged;
>
> (v) that the alleged conduct in the Complaint was not inextricably linked to the investigation; and
>
> (vi) that it was "insincere" for the Member to suggest that the hearing should be delayed until the CIC investigation was concluded when the conclusion of the investigation was entirely dependent upon the Member's refusal to disclose records in his possession.

[48] These allegations are certainly relevant. However, it is my view that this ground of appeal does not turn on whether the Hearing Committee erred in the manner alleged by Mr. Abrametz. The ultimate question is not whether the Hearing Committee's reasoning was flawed. It is whether the refusal to grant an adjournment was incorrect, in that it resulted in a breach of the duty of procedural fairness in relation to either the proceedings that led to in the convictions, or the sentencing. For the following reasons, I conclude it did not.

[49] First, it is my opinion that it is not necessary to decide whether the Hearing Committee erred in determining whether Rules 450(2) or 450(7) authorized the Chairperson or the Committee to grant the relief sought by Mr. Abrametz. The Hearing Committee expressly recognized that it had the authority to adjourn proceedings from time to time. It proceeded to consider the merits of the application and, having found that it was without merit, denied it. That decision did not turn in any way on the interpretation of Rules 450(2) or 450(7). I am accordingly not satisfied that the Hearing Committee's interpretation of these Rules had any impact on its bottom-line decision.

[50] Secondly, the refusal to grant an adjournment did not result in a denial of procedural fairness in relation to the proceedings that produced Mr. Abrametz's convictions. Any charges arising from the ongoing investigation may well relate to what he did with the funds he received as a result of the conduct that was the subject of Charges 1, 2, 4 and 5. However, proof of those Charges did not depend in any way on proof of tax evasion, and a successful defence to any tax evasion charges would not affect those convictions. The elements of the offences at issue did not include Mr. Abrametz's motive for doing what he did. Nor did Mr. Abrametz demonstrate how his ability to defend against the Charges on the merits might be indirectly compromised, whether as a result of incurring materially different costs in responding separately to the Charges and any tax-related charges, or otherwise.

[51] For these reasons, I am not satisfied that Mr. Abrametz's ability to defend against the Charges was undermined by the fact that the tax issue was being pursued separately. Further, as the Hearing Committee commented in the Adjournment Decision, the public and the profession have an interest in the timely resolution of complaints and of charges of misconduct. That factor was properly taken into account, regardless of the fact that there had already been a lengthy delay and that Mr. Abrametz had practiced under conditions without incident.

[52] In the result, the Hearing Committee did not commit a reversible error by refusing to adjourn the proceedings as they related to proof of the Charges. That decision was not incorrect, as it was consistent with the duty of procedural fairness.

[53] That leaves the question of whether the refusal to adjourn the proceedings constituted a denial of procedural fairness in relation to the *sentencing* aspects of the proceeding. However, it is not necessary to answer that question. That is so because I have concluded, for the reasons

explained below, that the Hearing Committee erred in sentencing Mr. Abrametz and that the appropriate remedy is to remit the issue of sentence to it to be reheard. It will be for the Hearing Committee to determine the procedure to be followed in relation to that hearing. That includes scheduling. If Mr. Abrametz chooses to apply for another adjournment, it will be for the Hearing Committee, not this Court, to decide – based on the evidence before it at that time and subject to the duty of procedural fairness – whether and on what terms an adjournment should be granted.

[54] In the result, I would dismiss Mr. Abrametz's appeal of the Adjournment Decision.

V. ANALYSIS: THE PENALTY DECISION

[55] Mr. Abrametz contends that the Hearing Committee erred by:

(a) failing to accord any or sufficient weight to the relevant mitigating factors in determining sentence; and

(b) imposing a sentence inconsistent with penalties imposed for similar infractions.

[56] He also argues that the Hearing Committee erred by failing to "globally" assess the reasonableness of the sentence in light of the circumstances of the offence and the offender, taking account of all relevant sentencing principles. I interpret this as an allegation that the Hearing Committee failed to apply the principle of proportionality, in significant part as a result of the errors made in relation to the mitigating factors.

[57] Finally, Mr. Abrametz says that if the sentence stands, the period during which he is unable to apply for readmission to the LSS should be reduced by thirty-six days, being the period between the order disbarring him and the date on which that order was stayed by Leurer J.A. (as he then was).

A. Did the Hearing Committee err in law by ignoring relevant mitigating factors in determining sentence?

1. Framing the issue

[58] It is an error of law for a decision-maker to ignore or, to put the matter differently, to fail to accord any weight, to factors that are relevant to the exercise of a discretionary power. This holds true in relation to the imposition of a penalty or sanction for professional misconduct, and, for that matter, as to interim suspensions and other interim orders.

[59] Mr. Abrametz submits that the Hearing Committee committed such an error by failing to accord *any* weight to seven mitigating factors, being the following:

(a) his self-report which gave rise to three of the four charges of which he was convicted;

(b) his explanation for his conduct;

(c) the fact that his clients were not required to testify;

(d) the 21 letters of support he tendered at the sentencing hearing;

(e) the negative impact of the proceedings on his practice;

(f) the time he spent under supervision prior to sentencing; and

(g) the delay in the investigation and prosecution.

[60] Mr. Abrametz also argues that the Hearing Committee erred by treating as aggravating, rather than mitigating, both his attempt to justify his conduct as repayment of his shareholder loans to his professional corporation, and what it found to be his "cavalier" attitude toward his misconduct, which it found to demonstrate a failure to appreciate the importance of integrity. As I have noted, Mr. Abrametz further contends that the Hearing Committee erred by failing to assess the reasonableness of the sentence globally, based on the circumstances of the offence and the offender.

[61] In response, the LSS asserts that none of the alleged errors identified by Mr. Abrametz constitute errors of law and that he has not demonstrated that there were any palpable and

overriding errors. It contends that *Abrametz SC* entirely forecloses Mr. Abrametz's argument that there should be a reduction in penalty because of delay, as the majority found there was no undue delay. It asserts that no credit can be given for time under supervision as "time served", as disbarments with an additional bar on the right to reapply do not equate to suspensions. It says that even if delay could be considered as a mitigating factor, a reduction in penalty should be countenanced in disbarment cases only in exceptional circumstances. It relies in this respect on Rowe J.'s comment in *Abrametz SC* that "[t]he threshold for a reduction in the sanction will be particularly high when the presumptive penalty is licence revocation" (at para 96).

[62] The LSS also emphasizes the nature of Mr. Abrametz's misconduct. It notes that both integrity and trust accounts, the use of which are heavily regulated because clients must have confidence that trust funds will be properly dealt with, are of great significance to its mandate. It appeals to the need for general and specific deterrence, and claims that a failure to send a strong message in response to Mr. Abrametz's conduct "would put the self-regulation of trust accounting at risk…[which]...in turn, would have deleterious effects on the profession in general and a client's right to solicitor-client privilege". As it put the matter, "[i]f the Law Society is unable to root out members who flagrantly abuse their trust accounts, how can it continue to maintain credibility in the larger discussion surrounding money laundering, or even self regulation?"

[63] The LSS stresses that Mr. Abrametz's conduct was planned, deliberate, dishonest, systematic, and calculated to deceive. It notes that he took advantage of vulnerable clients who had entered into high interest loans to purchase food and other necessities and that he recruited members of the public to assist in his scheme by having them endorse trust cheques that had been issued to them by his firm to enable him to cover up the fact that he would personally pocket the funds.

2. Sentencing principles: the legal framework

[64] To consider the parties' positions on sentence, it is necessary to carefully attend to the legal criteria that govern penalty decisions by an LSS hearing committee in the circumstances of this case. As Richards C.J.S. observed in *Peet v Law Society of Saskatchewan*, 2014 SKCA 109, [2015] 2 WWR 466 [*Peet 2014*] "sentencing of any sort, including sentencing for professional misconduct, is a difficult business. There is no single "right answer". This is so because the

sentencing authority must consider, balance and reconcile a number of different considerations" (at para 84). As Iacobucci J. said in *Ryan*, such decisions will frequently be "intricately bound to many factual findings and inferences about the misconduct of [the lawyer] and the interests of the public and the profession" (at para 41).

[65] In Saskatchewan, any discussion of the way this difficult business is to be done must begin with ss. 3.1 and 3.2 of the *LPA*:

> **3.1** In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:
>
> (a) to act in the public interest;
>
> (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
>
> (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.
>
> **3.2** In any exercise of the society's powers or discharge of its responsibilities or in any proceeding pursuant to this Act, the protection of the public and ethical and competent practice take priority over the interests of the member.

[66] These provisions are of relatively recent origin. Prior to 2010, the *LPA* did not speak directly to the purpose that governs the LSS in exercising its powers and carrying out its duties. In 2010, the *LPA* was amended by *The Legal Profession Amendment Act, 2009*, which added s. 3.1 and made major changes to the disciplinary process. In 2014, the *LPA* was further amended by *The Legal Profession Act, 2013* which, among other things, added s. 3.2 and provided for the appointment of non-benchers and non-members to participate in discipline hearings.

[67] The fact that the Legislature has explicitly directed that priority must be given to the public interest and public protection does not mean that earlier case law relating to the purposes and principles of sentencing is no longer relevant. The public interest and protection of the public have long been understood to be central to the sentencing process. Justice Rowe's brief summary in *Abrametz SC* of the purposes of sentencing by professional disciplinary bodies reflects that fact:

> [53] The purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve public confidence in the profession: T*he Legal Profession Act, 1990,* ss. 3.1 and 3.2; *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513, at para. 36; *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17, at para. 16; *Fortin v. Chrétien*, 2001 SCC 45, [2001] 2 S.C.R. 500, at para. 17; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at pp. 887-88; *Wigglesworth*, at p. 560; *G. MacKenzie, Lawyers & Ethics: Professional Responsibility and Discipline* (loose-leaf), at § 26:1. The client or patient is often in a vulnerable position

> in the professional relationship: *Pharmascience Inc.*, at para. 36; *Fortin*, at para. 17. The public places great trust in the advice and services of professionals: *Pharmascience Inc.*, at para. 36.

[68] The legislation does make it clear, however, that public protection and the interests of the public are the purposes that always govern. The interests of the profession and the lawyer should be taken into account only to the extent that doing so could be said to advance those purposes. This represents a subtle shift from the particular emphasis placed on the interests of the profession by some of the case law, including the leading decision in *Bolton v Law Society*, [1994] 1 WLR 512 (UK CA) [*Bolton*]. In that case, Sir Thomas Bingham M.R.– having stated that punishment and deterrence are purposes of sentencing – described the hierarchy of purposes as follows:

> [15] …In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. …
>
> (Emphasis added)

[69] This passage must now be reconciled with ss. 3.1 and 3.2 of the *LPA*. As Rowe J. affirmed, preserving public confidence in the profession continues to be a legitimate consideration in sentencing. However, maintaining the *reputation* of the profession can no longer be said to be "the most fundamental" purpose of sentencing. The Legislature has directed that the purposes specified in ss. 3.1 and 3.2 always govern, and in s. 3.2, have made it clear that protection of the public and ethical and competent practice – which are identified as a means of protecting the public – are the purpose of everything the LSS does, including disciplinary proceedings.

[70] In *Abrametz SC,* Rowe J. highlighted another important characteristic of law society disciplinary proceedings, commenting as follows:

> [54] Disciplinary proceedings are neither civil nor criminal, but rather *sui generis*: Mackenzie, at § 26:2; *Béliveau v. Barreau du Québec*, (1992), 101 D.L.R. (4th) 324 (Que. C.A.). They maintain discipline within a limited sphere of private activity. Thus, as stated before, they differ from criminal matters, which are of a public nature, intended to promote order and welfare within a public sphere of activity: *Wigglesworth*, at p. 560; *Canada (Attorney General) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392, at para. 45.

[71] In *R v Wigglesworth*, [1987] 2 SCR 541, which is referred to in the above passage, the Supreme Court distinguished prosecutions for criminal and quasi-criminal offences from proceedings relating to professional sanctions. As Wilson J. wrote in that case:

> [32] In my view, if a particular matter is of a public nature, intended to promote public order and welfare within a public sphere of activity, then that matter is the kind of matter which falls within s. 11. It falls within the section because of the kind of matter it is. This is to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity…

[72] Although Wilson J. drew this distinction to explain why s. 11 of the *Charter* does not apply to private, domestic or regulatory matters, *Abrametz SC* demonstrates that it remains significant when determining the principles that govern the *sui generis* business of sentencing lawyers. Justice Wilkinson discussed this issue, and the resulting difference between disciplinary sanctions and criminal sentencing, in *Anthony Merchant v Law Society (Saskatchewan)*, 2009 SKCA 33, [2009] 5 WWR 478 [*Merchant 2009*]. She cited *Bolton* for the proposition that this difference means, among other things, that while a criminal court judge is generally free to focus on the individual, the need to take account of the collective reputation of the profession means that many criminal law sentencing principles, such as mitigation, have less effect in law society sentencing proceedings. As she also explained, senior counsel may be more seriously punished because they have "name recognition that attracts interest, and simultaneously draws the harsh glare of publicity" (at para 99).

[73] *Merchant 2009* was decided before the addition of ss. 3.1 and 3.2 to the *LPA*, and accordingly explains the difference between criminal law and disciplinary sentencing - including the reduced significance of the mitigating circumstances in lawyer disciplinary proceedings – as resulting largely from the fact that the fundamental purpose of sentencing is to protect the collective reputation of the profession. However, I do not suggest that because protecting the profession's reputation is no longer the most fundamental purpose, mitigating circumstances should be given the same weight as in criminal sentencing. That difference in approach continues to be appropriate, particularly in light of the direction in s. 3.2 that "the protection of the public and ethical and competent practice take priority over the interests of the member". I also accept that the senior counsel factor may also continue to be relevant, as it may, depending on the circumstances, bear a relationship to deterrence.

[74] What, then, in light of these purposes, are the principles of sentencing in a case such as this? As Wilkinson J.A. observed in *Merchant 2009*, "the reasonable range of sentences in disciplinary matters is elastic…[and]…will be impacted by considerations of age, experience, discipline history, the unique circumstances of the member, and the nature of the conduct complained of" (at para 95). In Gavin McKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (2023-2) (Toronto: Thomson Reuters, 2018) at 26:18 (WL) (*McKenzie*), the learned author notes that specific deterrence, general deterrence and, in appropriate cases, improved competence, rehabilitation, and restitution are relevant, and offers this overview of considerations that are often taken into account:

> Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of injury, the lawyer's blameworthiness, and the penalties that have been imposed previously for similar misconduct. In a 2022 decision [*Abrametz SC*], the Supreme Court of Canada held that the presence of an abuse of process may be considered when determining the appropriate penalty. In assessing each of these factors, the discipline hearing panel focuses on the offence rather than on the offender and considers the desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character, and the lawyer's mental state. Alcoholism, drug addiction, stress caused by financial and matrimonial difficulties, and mental illness are common factors in discipline cases and are material to the assessment of penalty in cases where a causal relationship exists between the lawyer's condition and the misconduct being considered. (footnotes omitted)

[75] In James T. Casey, *Regulation of Professions in Canada*, loose-leaf (2023-6) (Toronto: Thomson Reuters, 1994) at 14:3 (WL) (*Casey*) the learned author identifies a slightly different non-exclusive list of factors that have been treated as mitigating:

- "attitude" since the offence was committed, as a less severe sanction may be imposed where the person genuinely recognizes that their conduct was wrong, with the caveat that there is authority that while remorse can be a mitigating factor, a lack of remorse cannot be an aggravating factor, in circumstances where the offender honestly believes in their innocence (*D'Mello v Law Society of Upper Canada*, (2015), 2015 ONSC 5841);
- the age and experience of the offender,
- the offender's disciplinary record;
- entering a guilty plea where doing so shows an acceptance of responsibility; provided that there is authority that it is an error to treat an explanation offered in an attempt to mitigate the sanction as an aggravating factor (*McLean*);
- whether restitution has been made;

- the good character of the offender; and
- a long unblemished record of public service.

[76] As *Casey* also observes, aggravating factors may include very serious misconduct, planning and deliberation, the vulnerability of those affected, and the impact of the misconduct on the client and others.

[77] These authorities demonstrate that the factors that must be considered when imposing a sanction depend on the facts, and that many of the purposes and principles that inform criminal sentencing, including the requirement to take account of aggravating and mitigating factors and the circumstances of the offence and the offender, have been found to apply. So too have the principles of parity and proportionality.

[78] As to denunciation, retribution and punishment, in *McKenzie* the learned author opines that "[t]he purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession…In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes" (at 26.1). I would agree that sentences should not be determined by reference to denunciation and retribution for their own sake but as discussed, by reference to the purposes for which the sanction is imposed. Denunciation, for example, may be relevant to deterrence, and thus to the protection of the public. In *Bolton*, Sir Thomas Bingham M.R. explored the relationship between punishment and the other purposes of professional sanctions, suggesting that punishment is sometimes appropriate in cases involving "the most serious" lapses. As he said:

> [15] It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way….

[79] I would conceive of this "punitive element" as a *result* of the imposition of a sanction, or as an element tied to another valid reason for the sanction, as opposed to constituting an independent or standalone purpose. This, as I understand it, was the point being made by Finch J.A. (as he then was) when he wrote in *McKee v College of Psychologists (British Columbia)*, [1994] 9 WWR 374, 116 DLR (4th) 555 (BCCA) at para 7, that while "the emphasis must clearly

be upon the protection of the public interest", there is also "an aspect of punishment to any penalty which may be imposed".

[80] One of the principles that governs the imposition of any sanction by a Hearing Committee is parity. Parity is also a factor in determining a proportionate sentence. In practical terms, this means that a hearing committee must take account of LSS sentencing precedents when determining sentence and may also consider sentencing decisions from other provinces. That is so not only in relation to specific issues such as, for example, the relevance of certain facts as mitigating factors, but relatedly, the question of what sentences have been imposed in similar circumstances.

[81] The significance of precedents is nicely illustrated by *McLean v Law Society of Saskatchewan*, 2012 SKCA 7, 347 DLR (4th) 414 [*McLean*], where this Court, comparing the circumstances in that case to those in *Merchant 2009*, said this:

> [53] When the Committee developed their reasons in this case, it would have been clear that Mr. McLean's four-month suspension and indefinite supervision order could not stand together with the two-week suspension imposed on Mr. Merchant. One of them had to have been wrongly decided. While deference is owed to the Committee's assessment of *Merchant 2009*, it is worth noting that Mr. McLean, who would have had no notice that the earlier decision would not be considered a good precedent, prior to receiving the Committee's reasons, can rightly have a sense of grievance. Moreover, even when *Merchant 2009* is set to one side, it is still necessary to assess the fitness of the penalty in this case, having regard for the objective gravity of the counts to which Mr. McLean pled guilty, all of the decisions relied upon by the Committee and other decisions of the Law Society.
>
> [54] The Law Society's decisions are well-documented: decisions pertaining to 2007, and after, are available at *www.lawsociety.sk.ca*. Decisions prior to 2007 are not yet available on-line but may be obtained from the Law Society. With one exception, suspensions greater than one month involve one or more of the following aspects: (i) failure to comply with an Order of the Discipline Committee regarding trust accounts — 2007 SKLS 2; (ii) a personal benefit taken or accruing to the member — 1984 SKLS 4; 1996 SKLS 5; 1997 SKLS 2; 1998 SKLS 3; 1999 SKLS 9; 2003 SKLS 10; 2004 SKLS 4; 2005 SKLS 3; 2005 SKLS 4; (iii) a conflict of interest on the part of either the member or the client — 1981 SKLS 2; 1989 SKLS 4; 1998 SKLS 1; (iv) a misrepresentation to a court, a tribunal or the Law Society itself, 1999 SKLS 8; (v) a misrepresentation as to the legal status of affairs knowing that someone will rely on the misrepresentation to their detriment — (*Law Society of Saskatchewan v. J.G.*, order dated February 18, 2011); and (vi) multiple and egregious failures to respond to the Law Society — 2004 SKLS 8. Significant loss is often a factor in the above decisions. Importantly, the Discipline Committee did not rely upon any of the above decisions to support the penalty imposed on Mr. McLean. The one exception is *Law Society of Saskatchewan v. Stinson*, order dated December 12, 2008.

[82] The significance of precedents is also demonstrated by the reasoning in a second decision: *Peet v Law Society of Saskatchewan,* 2019 SKCA 49, [2019] 12 WWR 590. There, this Court

considered precedents from both this and other provinces when determining whether the sanction of a six-month suspension and $40,000 fine imposed on Mr. Peet was inconsistent with the penalties imposed in similar circumstances, and how the principle of progressive discipline applied. The Hearing Committee had explained that it had concluded that Mr. Peet's conduct – which included failing to respond to previous discipline and to LSS requests – suggested he was close to ungovernable, that this compromised the profession's privilege of self-regulation, and that as a result, "only robust sanctions have any hope of attracting [his] attention". In considering this on appeal, Whitmore J.A. found as follows:

> [62] Certainly, the sanction attracted by Mr. Peet's conduct exceeded many of those that have been handed down in Saskatchewan and elsewhere. However, that is not to say the sanction is unreasonable. By any standard, Mr. Peet's continuing flaunting of the Law Society's authority is excessive and merits a significant penalty. The penalty is not directly comparable to other penalties because the circumstances here are worse than any available comparators. When one considers Mr. Peet's record of previous offences and convictions, I am unable to say the penalty is unreasonable.

[83] This statement reflects the reality that while precedents must be considered, sentencing decisions are rarely on all fours. That is so because, as discussed above, a wide variety of factors may be relevant in the highly fact-dependent process of sentencing and a Hearing Committee is obliged to consider all relevant circumstances. The professional and regulatory context that must inform the sentencing process may also differ from case to case, just as in criminal proceedings, as factors unique to a particular community or a crime that has become of increased concern, for example, may be relevant.

[84] With this legal framework in mind, I will now turn to the issues identified by Mr. Abrametz.

3. Mr. Abrametz's cooperation

[85] The Penalty Decision contains a section titled "Applicable Mitigating Factors". In that part of its reasons, the Hearing Committee identified only two mitigating factors – that Mr. Abrametz was 69 years old at the time of sentencing and had practiced for nearly 40 years without being subject to discipline. It also dealt briefly with and rejected two other potentially mitigating factors

in this section. It did not agree with Mr. Abrametz's submission that his self-report should be mitigating because it had saved his clients from having to testify, reasoning as follows:

> [25] …It was the failure of the Law Society of Saskatchewan to interview any of the Member's clients during its investigation, rather than the Member's self-report, that rendered the clients' attendance at the Hearing avoidable.

[86] The Hearing Committee also rejected Mr. Abrametz's contention that delay was mitigating. It explained that while the dismissal of his stay application did not preclude it from considering the length of the investigation and proceedings, "the circumstances of this case and the stages of the proceedings were complex, protracted and pointedly adversarial throughout" and that, for that reason, "the Committee does not agree that the investigation and discipline process has been unreasonably lengthy such that it amounts to a mitigating factor" (at para 26).

[87] I will deal first with the Hearing Committee's reasoning in relation to Mr. Abrametz's self-reports and cooperation with the investigation. I will separately address the issue of delay in the next section of this judgment.

[88] It is my opinion that the failure to give any weight to Mr. Abrametz's cooperation in the investigation of the Charges as a mitigating factor resulted in part from an error in the reasoning on this point. The fact that the LSS did not interview Mr. Abrametz's clients was not, as the Hearing Committee stated, the reason they did not have to attend the hearing. That confuses cause and effect. Absent evidence to the contrary, the only reasonable inference is that the LSS did not interview his clients because it decided it did not need to call them as witnesses, as it had the evidence necessary to prove the Charges without doing so.

[89] The question, then, is whether Mr. Abrametz in fact assisted the LSS in obtaining that evidence. There is uncontradicted evidence that Mr. Abrametz's self-report and ongoing cooperation did assist the LSS in the investigation. On December 4, 2012, Mr. Abrametz reported that he had failed to promptly deposit fees on eight files. As a result, LSS auditors reviewed those files when they first attended at Mr. Abrametz's office on December 5–7, 2012 to investigate. They also discussed them with Mr. Abrametz, who explained what they meant. On December 18, 2012, Mr. Abrametz sent a second letter to the LSS that appended packages of records in relation to these transactions, as requested by the auditors. He also admitted during this first phase of the

investigation that he had advanced funds to clients on settlement moneys and had charged 30% for doing so, which he characterized as an "attendance fee".

[90] In the result, by January of 2013 the LSS had the particulars of the cheques that had been endorsed back to Mr. Abrametz by his clients and the cheques that were issued to a fictitious person that had been endorsed by him. It knew enough about those transactions, as well as the advances that would be the basis for charge 5, to list them in the Notice of Intention to Interim Suspend that was prepared by the LSS in January of 2013. That notice was described in *Abrametz CA* as follows:

> [13] … By January 9, 2013, the Conduct Investigation Committee [CIC] had determined that it knew enough to prepare a Notice of Intention to Interim Suspend Mr. Abrametz. That notice was served when Mr. Abrametz returned to Canada on February 5, 2013. It said the CIC was considering an interim suspension of Mr. Abrametz pending the completion of an investigation and report relating to the following admissions and allegations:
>
> > 1. Mr. Abrametz admitted making payments from trust to Paul Spakowsky, a fictitious person;
> >
> > 2. Mr. Abrametz admitted endorsing the name of Paul Spakowsky on trust cheques;
> >
> > 3. Mr. Abrametz obtained payments from clients by issuing trust cheques payable to them and having them endorse those cheques back to Mr. Abrametz, thereby bypassing law firm records in an effort to avoid paying tax on the amounts paid;
> >
> > 4. Mr. Abrametz made loans to clients, some of whom were vulnerable, in the absence of and without a formal waiver of independent advice; and
> >
> > 5. Mr. Abrametz charged clients, to whom loans were made, fees or interest that resulted in an excessive rate of return.

[91] Mr. Abrametz continued to cooperate with the auditors as the investigation proceeded in 2013 and 2014. He self-reported, made admissions when interviewed by LSS auditors, and responded when asked for more information. Indeed, the Hearing Committee found that as a fact, commenting that "[w]hile [Mr. Abrametz] initially cooperated with the investigation, that cooperation ceased in May 2015" (at para 64). That means he was found to have cooperated for the first 30 months of the investigation. As Rowe J. noted in *Abrametz SC*, "the Hearing Committee's finding that, at a certain point, Mr. Abrametz stopped cooperating in the investigation was supported by uncontroverted evidence" (at para 115).

[92] Given the uncontradicted evidence as to Mr. Abrametz's self-reports and cooperation, I can reach no other conclusion but that the Hearing Committee made a palpable error of fact in finding that it was "the failure of the [LSS] to interview any of [Mr. Abrametz's] clients during its

investigation, rather than [Mr. Abrametz's] self-report, that rendered the clients' attendance at the Hearing avoidable". That error resulted both from the confusion between cause and effect referred to above, and more importantly, from the failure to take account of the assistance provided by Mr. Abrametz from the outset and his cooperation during the first 30 months of the investigation.

[93] Further, the Hearing Committee's failure to consider the potentially mitigating effect of Mr. Abrametz's cooperation did not relate solely to why his clients were not called to testify. It failed to consider its potentially mitigating effect more generally. It did conclude, in the section of the Penalty Decision that dealt with "admissions of guilt", that Mr. Abrametz should get no credit for having self-reported in the December 4, 2012, letter to the auditor. It referred to characteristics of his December 4, 2012, letter that would reduce its significance. In particular, it noted that the letter was sent the day before the first on-site audit was to take place, and that while it identified the eight files where Mr. Abrametz had failed to deposit fees in his office account as required by the Rules, it did not disclose the details of those transactions. It also commented that he had not self-reported or admitted responsibility for the conduct that resulted in the convictions on Charges 2, 4 or 5.

[94] These findings of fact – which were taken into account when considering the potentially mitigating effect of Mr. Abrametz having self-reported –are accurate in relation to the December 4, 2012 letter. They would be relevant in considering the weight to be assigned to the December 4, 2012 letter as a mitigating factor. However, the fact remains that the letter was a self-report and that, as I have explained, it was far from the only evidence demonstrating that Mr. Abrametz had cooperated with the LSS. Notably, the LSS auditor, described the admissions made and documents provided by Mr. Abrametz to LSS auditors during their attendance from December 5–7, 2012 as a self-report. He also described Mr. Abrametz's December 18, 2012 letter, with attached documents relating to each of the eight files, as a "self-report package". Further, and as I have noted, the Hearing Committee itself found that Mr. Abrametz stopped "cooperating" only in May of 2015.

[95] The Hearing Committee was obliged by the principles of sentencing to consider potentially mitigating factors. All of the facts relating to Mr. Abrametz's self-reports and cooperation could be considered mitigating. While it was for the Hearing Committee to decide what *weight* should be assigned to them, they could not be ignored. With respect, the Hearing Committee's failure to

consider this potentially mitigating factor, other than to entirely discount the initial self-report, was an error of law.

4. Delay

[96] Mr. Abrametz has, despite that the Supreme Court of Canada rejected his claim that there was an abuse of process resulting from delay, argued that delay is nonetheless a significant mitigating factor in this case and that the Hearing Committee erred by failing to take it into account. A proper consideration of his arguments requires a brief review of the law and of the evidence and findings of the majority in *Abrametz SC*.

[97] In *Abrametz SC*, Rowe J. affirmed that delay in the investigation and prosecution of the proceedings may justify a reduction in sentence. In doing so, he cited *Wachtler v College of Physicians and Surgeons of the Province of Alberta*, 2009 ABCA 130, [2009] 8 WWR 657, where the Alberta Court of Appeal found only that the total delay that had occurred was "at the cusp of unacceptable delay", commenting as follows:

> [95] *Wachtler* provides an example of how delay can be a factor in determining what disciplinary sanctions should be imposed. The Court of Appeal reduced the member's penalty given the length of the proceedings. The member had received a penalty including a three-month suspension and a costs award against him following disciplinary proceedings by the College of Physicians and Surgeons: paras. 9-10. The Court of Appeal found that the College had failed to properly consider the lengthy delay in the case. The Court of Appeal concluded that although the member had shown that he suffered some prejudice, he was unable to demonstrate that the prejudice was such as would justify a stay: para. 36. Instead, the Court of Appeal reduced the sentence to a one-month suspension (which had already been served) and set aside the costs award: paras. 45-46 and 49.
>
> [96] The threshold for a reduction in the sanction will be particularly high when the presumptive penalty is licence revocation. Given the gravity of the misconduct generally required for such a penalty to be imposed, setting it aside might imperil public confidence in the administration of justice, rather than enhance it.

[98] Justice Rowe also referred to *Law Society of Upper Canada v Abbott*, 2017 ONCA 525, 414 DLR (4th) 545 [*Abbott*], in this context. In *Abbott*, the Appeal Division of the Law Society Tribunal agreed with the Hearing Division of the LSUC that Mr. Abbott had knowingly participated in multiple instances of mortgage fraud, but nonetheless reversed the decision of the Hearing Division to revoke his licence to practise law, largely as a result of the lengthy delay in the proceedings. The Ontario Court of Appeal allowed the Law Society's appeal and reinstated the

licence revocation. Justice Lauwers, writing for the Court, summarized his reasons for doing so as follows:

> [90] In setting a penalty, the adjudicator should take into account in possible mitigation such factors as the Law Society's investigative and procedural delay, the prejudice to the interest of the public in a timely investigative and prosecutorial process, and to the interests of licensees more generally, to which the Appeal Division alluded…

[99] This statement reflects the fact that delay falling short of an abuse of process may constitute a mitigating factor. Similarly, Lauwers J.A. also referred with approval to the statement by the Hearing Division that "delay causing prejudice can be a mitigating factor in many cases" (at para 70).

[100] The fact that delay falling short of an abuse of process may be a mitigating factor has also been confirmed by this Court. *Peet 2014* was an appeal of both conviction and penalty. As Richards C.J.S. explained, the Discipline Committee "characterized the delay in dealing with the charges as a mitigating factor in sentencing even though it was not able to determine whether the delay was the fault of Mr. Peet or of the Law Society" (at para 35). He held that in doing so, the Discipline Committee did not mischaracterize the mitigating or aggravating aspects of what Mr. Peet had done, but rather had "identified and must be taken to have considered all of the relevant sentencing considerations in coming to its conclusion that a 30-day suspension was an appropriate sentence" (at para 92).

[101] *McLean* illustrates the same point. There, this Court allowed Mr. McLean's appeal of a decision suspending him for four months. As noted above, it concluded that the Discipline Committee had erred by refusing to consider and weigh the explanations offered by Mr. McLean as to why he had acted as he did as a potentially mitigating factor. It also found that the Committee had mischaracterized Mr. McLean's conduct in several ways, had turned mitigating factors into aggravating ones, and had imposed a penalty that was not defensible in light of sentences imposed in other cases.

[102] As to delay, the Court found that it was an important consideration, as Mr. McLean had been under supervision while awaiting the final disposition of the prosecution, and that this had impacted him. In the result, it held that this called for a reduction in sentence, reasoning as follows:

> [60] But for Mr. McLean's prior record and the fact of five charges, a fit penalty in this case might very well have warranted a suspension of something up to 30 days. In this case,

> however, his prior record and the five counts permit the imposition of a penalty greater than that, and more in accordance with Mr. Stinson's penalty.
>
> [61] In this case, however, the Court should take into account the time that Mr. McLean has spent on supervision prior to the hearing of this appeal. While a significant part of that delay falls yet again at Mr. McLean's feet, he has nonetheless suffered a significant emotional and financial penalty by the lapse of time.

[103] The question arises as to whether *mere delay* may be mitigating, regardless of whether the lawyer has suffered any prejudice. It is my view, and the case law demonstrates, that the impact on the lawyer, whether financial, reputational, emotional, or otherwise, is at a minimum an important consideration when deciding whether delay is mitigating. There was evidence of such impact on Mr. Abrametz. It is not accordingly necessary to decide whether mere delay – which would be very rare if there had been a lengthy delay in any event – could be considered mitigating.

[104] Returning to the circumstances of this case, as is noted above, the Hearing Committee rejected delay as being a mitigating factor. It concluded that the investigation and sentencing process were not unreasonably lengthy, on the ground that "the circumstances of this case and the stages of the proceedings were complex, protracted and pointedly adversarial throughout". Mr. Abrametz contends that these conclusions cannot be sustained in light Rowe J.'s statement in *Abrametz SC* that the 71-month delay from the start of the audit investigation to the Stay Decision "gives rise to serious concern" (at para 108).

[105] With respect, I do not agree. The Hearing Committee concluded that the delay here was not "unreasonably lengthy". I understand this as constituting a finding of mixed fact and law that must be accepted unless it is palpably wrong. The majority in *Abrametz SC* held that "applying the standard of palpable and overriding error, there was no proper basis for the Court of Appeal to set aside the Hearing Committee's findings that the delay was not inordinate" (at para 116). Although this comment was offered in the context of considering this Court's review of the Hearing Committee's findings relating to whether an abuse of process had occurred, when viewed through the lens of the palpable and overriding standard of review, I cannot distinguish the analysis that led to this conclusion from that now offered by Mr. Abrametz as to why I should conclude that there was unreasonable delay when I account for it as a mitigating factor. Accordingly, it is incumbent on this Court to accept this finding when reviewing the Penalty Decision for error.

[106] For these reasons, I am precluded from finding that the Hearing Committee erred in concluding that delay did not constitute a mitigating factor. However, this is not to say that the length of time that the proceedings took, when combined with other factors, is not relevant to penalty. That issue is discussed further below.

5. Mr. Abrametz's defence and explanation of his misconduct

[107] In the section of the Penalty Decision titled "Admissions of Guilt", the Hearing Committee found it to be significant that Mr. Abrametz did not plead guilty, but instead sought to justify his receipt of the payments described in Charge 1, on the basis that he was being repaid for a shareholder loan to his professional corporation. It noted that it had not accepted his evidence that there was such a loan, and that this would not have justified the breach of the trust account requirements in Rule 942(3) in any event. It commented that Mr. Abrametz could not explain his actions but had also acknowledged that they were improper, as follows:

> [158] When asked during the Hearing why he had clients endorse trust cheques back to him, the Member was unable to explain his actions. When queried further, he testified that at the time, he thought it was a good idea and the easiest way to get money. He acknowledged that, in hindsight, it was inappropriate.

[108] In the ultimate paragraph in this section, the Hearing Committee also commented that Mr. Abrametz's attitude to the use of a pseudonym that was a family joke was "cavalier", and that he had lent money to clients when his and their interests conflicted. The latter point was not an aggravating factor, but essentially a description of an element of the offence. Having referred to these concerns, it ended that section with the following conclusory statement, which signalled that Mr. Abrametz's self-reports and acknowledgment that taking money off the books were to be given no weight:

> [23] …The Committee is of the opinion, based upon the evidence presented at the Hearing, that the Member has shown a complete lack of understanding and remorse for his behaviour.

[109] Mr. Abrametz submits that this reasoning reflects an error of law. He contends that in *McLean*, the Court decided that a lawyer's explanation of their misconduct must be considered when determining a fit sentence. I agree that *McLean* stands for that proposition, the Court having there made this point as follows:

> [27] Having pled guilty, Mr. McLean was nonetheless entitled to place his explanation before the Committee in mitigation of his sentence. Indeed, much of what was said on Mr. McLean's behalf was before the Committee by way of letters to the Law Society,

> appended to the Agreed Statement of Facts. Far from considering the explanation, or the existence of extenuating circumstances, the Committee appears to have penalized Mr. McLean for having put forward an explanation.

[110] The Hearing Committee distinguished *McLean* on the basis that Mr. McLean had pled guilty before offering his explanation of his misconduct, while Mr. Abrametz had not. With respect, that reasoning reflects legal error. The Hearing Committee was obliged to consider Mr. Abrametz's explanation for his conduct when determining sentence regardless of whether he pled guilty and defended against the Charges – successfully so in relation to three of the seven charges. The question at the sentencing stage was not whether the fact he was being repaid a shareholder's loan could have constituted a defence. It was whether it would have been relevant to sentencing. With respect, the fact that Mr. Abrametz did not take funds that were or would be payable to a client or to a third party was clearly relevant to the seriousness of the offence.

[111] For these reasons, the Hearing Committee erred in law by finding that Mr. Abrametz's explanation that he was taking funds to repay a shareholder loan, rather than client funds, and the fact that he defended against the Charges, demonstrated a lack of understanding and remorse, which was weighed against him. The fact that a lawyer does not plead guilty and has highlighted facts that could reasonably be found to be mitigating or that could cast aggravating factors in a positive light cannot be treated as an aggravating factor.

6. Conditions of practice and the absence of practice concerns

[112] Although Mr. Abrametz was able to practice while the proceedings against him were prosecuted, it was on a restricted basis. As a condition of his continued practice, on March 14, 2013, Mr. Abrametz signed an undertaking to retain, at his own expense, another member of the LSS approved by it, to oversee and monitor his practice and trust account activities. Among other things, Mr. Abrametz was required to add this lawyer as a co-signer on his trust accounts and to regularly meet with that lawyer to review his open files. The supervisor also oversaw all aspects of Mr. Abrametz's trust transactions and was required to approve all withdrawals to be made or cheques to be drawn on Mr. Abrametz's trust account. Mr. Abrametz also agreed to get prior approval of any agreements, including retainer agreements, assignments, advances, and other financial arrangements, and to provide various financial records to LSS auditors monthly, and to his supervisor.

[113] Mr. Abrametz practiced under these conditions for six years before he was sentenced. As the Hearing Committee explained, referring to the practice supervisor's role, he did so without incident:

> At the commencement of this role there were a small number of proposed retainers that were turned down or required modification but where that was required by us, he was eager to comply. He treated all requests for changes or additional information with professionalism and integrity. There have been absolutely no issues which raised any concerns with us after Mr. Abrametz was able to familiarize himself with our views and requirements. He has conducted himself in a fully appropriate fashion.

[114] Before the Hearing Committee, Mr. Abrametz argued that these facts mitigated the penalty that would otherwise be appropriate in this case. The Hearing Committee rejected this submission in a single sentence, stating that Mr. Abrametz had "tendered no compelling evidence that his practice has been negatively impacted as a result of the required supervision or that the length of time that he has been under supervision warrants a reduction in his penalty" (at para 28).

[115] I have several concerns with this reasoning. This passage indicates that the Hearing Committee was of the view that the length of time Mr. Abrametz was under practice supervision was relevant only if *on its own* it merited a reduction in penalty. This reflects an error of law. The question was whether it should be accorded any weight as a mitigating factor, to be considered with all other relevant factors.

[116] Further, this reasoning demonstrates that the Hearing Committee believed that the fact that Mr. Abrametz was obliged to practice under these conditions for six years could only be treated as mitigating if his practice was negatively impacted. This also represents an error of law, as it fails to take account of the relationship between public protection and deterrence and an appropriate sanction in this case; that is, the conditions of practice imposed on Mr. Abrametz addressed public protection and the public interest, including deterrence. Moreover, although the conditions enabled him to continue practising, they were and would have been seen by the public and the profession as a sanction. In addition, and as noted, there were no professional conduct issues on Mr. Abrametz's part during the lengthy period they were in place. All of these factors should have been taken into account when considering the mitigating effect of the practice conditions.

[117] I recognize that the majority in *Abrametz SC* concluded that this Court "failed to set out a proper basis for interfering with the finding that Mr. Abrametz did not suffer *significant prejudice*

from the conditions on his practice" (at para 122, emphasis added). However, that observation was made in the context of the abuse of process analysis, where proof of significant prejudice of a certain kind is required. A different threshold applies when the issue is whether the imposition of and compliance with interim sanctions for a lengthy period is a mitigating factor.

[118] As a final note, I would again emphasize that it was for the Hearing Committee to decide what weight should be accorded to mitigating and aggravating factors, within the limits of its discretion. However, it was an error of law for it to reject as irrelevant the fact that Mr. Abrametz practiced under conditions from February of 2013 until the Penalty Decision was issued on February 28, 2019 – a period of six years – particularly given that he was not only "eager to comply" but reacted to requests "with professionalism and integrity" and conducted himself in a "fully appropriate manner". Further, this error explains, at least in part, the Hearing Committee's conclusion that specific deterrence of Mr. Abrametz was still required.

7. Conclusion regarding relevant mitigating factors

[119] For these reasons, I am satisfied that the Hearing Committee erred in law by ignoring relevant mitigating factors when sanctioning Mr. Abrametz. The question that remains is whether these errors, taken together, impacted the Penalty Decision in a manner that calls for intervention by this Court. In the ultimate paragraph of the Penalty Decision, the Hearing Committee summarized it reasons for imposing the sentence it did, as follows:

> [42] The Committee is mindful of the Law Society of Saskatchewan's role in regulating the legal profession with an aim of protecting the public, maintaining public confidence in the profession, meeting the requirements of general deterrence within the Saskatchewan legal community and meeting the requirements of specific deterrence of the Member himself. The Committee finds that the circumstances in *Oledzki*, *Tilling* and *Dyer* as well as those in the cases of *Duncan-Bonneau* and *Aguirre* to be most analogous. Having considered the principles of penalty enumerated herein and having measured the circumstances of the charges for which the Member was found guilty the Committee concludes that imposing a suspension upon the Member is inadequate. I would agree with the LSS that none of the cases identified by the parties could be said to have a similar factual matrix to this case. This case did not fall into the category of cases that are generally considered to attract a presumptive penalty of disbarment.

[120] The failure by the Hearing Committee to mention mitigating factors at all in this summary of its reasons for disbarring Mr. Abrametz and denying him the right to reapply for two years is both telling and important. As a result of its narrow focus on the seriousness of the offences and the potential impact on the reputation of the profession and the LSS, the Hearing Committee failed

to conduct a proper proportionality analysis. Strikingly, the following paragraph demonstrates that even the issue of general deterrence was analyzed in terms of the potential damage to the reputation of the profession and the LSS, which was seen as requiring the strongest available sanction:

> [35] The impact upon the legal profession should not be viewed exclusively from the perspective of the public. This Committee should also consider the importance of general deterrence within the legal profession in addressing the impact that the Member's behaviour has had on the reputation of the profession. The ability of the Law Society of Saskatchewan to effectively regulate the profession and its members requires not only the confidence and respect of the general public but also that of the membership itself. It may be said that an insufficient penalty would offend the public's sense of justice, and that of the profession.

[121] In the result, it is my respectful opinion that the Hearing Committee's errors identified above affected the result, which calls for intervention by this Court. As I discuss below, these errors also led the Hearing Committee to misapply the principle of parity.

B. Did the Hearing Committee err by imposing a sentence inconsistent with penalties imposed for similar infractions?

[122] Given that the errors identified above require that a remedy be granted, it is not strictly necessary to consider the second ground of appeal. Further, the application of the principle of parity depends on the nature of the offence and the offender. Because a fresh look at the evidence in a manner that avoids the errors that were made would result in a different picture as to the nature of the offence and the offender, the Hearing Committee might well arrive at a different view of the precedents. It will nonetheless be useful to briefly address the second ground of appeal, to clarify how the errors impacted the Hearing Committee's decision as to the key sentencing precedents.

[123] Mr. Abrametz submits that the Hearing Committee imposed a sentence that was inconsistent with penalties imposed for similar infractions – essentially, that it erred in the application of the principle of parity. He contends that the penalties imposed in the following cases are the relevant comparators in Saskatchewan:

a. *Law Society of Saskatchewan v Angus,* 2010 LSS 6 [Angus]

   Six counts of conduct unbecoming - three instances of reckless misappropriation of funds, reckless preparation of a false account, breach of Undertaking and failing to respond to the LSS

   Sentence: Twelve-month suspension; practice conditions upon return to practice; $10,740.00 payment of restitution; costs of $8,135.00

b. *Law Society of Saskatchewan v Ferraton*, 2014 SKLSS 2 [Ferraton]

Four counts of conduct unbecoming, including entering into a business transaction with a client

Sentence: One month suspension; costs of $4,150.00

c. *McLean v Law Society of Saskatchewan*, 2012 SKCA 7 [McLean]

Five counts of conduct unbecoming, including failure to comply with trust conditions.

Sentence: Two-month suspension, with 25 days to be served following the decision and credit for suspension already served.

d. *Law Society of Saskatchewan v Migneault*, 2017 SKLSS 7 [Migneault]

Eight counts of conduct unbecoming, including five trust accounting rule breaches and two counts of participating in fraud

Sentence: Two-year suspension with credit for 18 months of suspension as an interim sanction; costs of $15,360.00; continued professional development; practice conditions upon return to practice

e. *Law Society of Saskatchewan v Tilling*, 2015 SKLSS 1 [Tilling]

Three counts of conduct unbecoming, including accepting and failing to deposit trust funds, failure to maintain a book of receipts for cash transactions and misappropriation of trust funds.

Disbarment with no right to reapply for a period of one (1) year; costs of $4,032.50

f. *Law Society of Saskatchewan v Winegarden*, 2017 SKLSS 8 [Winegarden]

Two counts of conduct unbecoming, including one trust accounting rule breach and the failure to maintain proper books and records.

Sentence: 14-month suspension; practice conditions upon return to practice; costs of $3,990.00

[124] Mr. Abrametz correctly notes that these, and indeed, the great majority of the sentencing decisions referred to by the Hearing Committee, resulted in the imposition of a suspension rather than disbarment. He argues that the Hearing Committee erred in selecting five cases that resulted in disbarment as the best comparators. He submits that *Duncan-Bonneau* and *Aguirre* cannot properly be used as comparators, as they involved lawyers who voluntarily resigned in the face of disciplinary action. He notes that he did not misappropriate property, a feature that was present in many Saskatchewan disbarment cases, including the following decisions that were among those identified by the Hearing Committee as the best comparators:

a. *Law Society of Saskatchewan v Oledzki*, 2009 SKLSS 4 [*Oledzki*], affirmed *Oledzki v. Law Society* (Saskatchewan), 2010 SKCA 120, 362 Sask. R. 86 (Sask. C.A.)

> Twelve counts of conduct unbecoming, forgery of testamentary documents prepared by the member to benefit the member and his family.
>
> Sentence: Disbarred with no right to reapply for one year (one year suspension served); costs of $7,5626.25.

b. *Law Society of Saskatchewan v Nolan*, 2008 SKLSS 4 [Nolan]

> Three counts of misappropriating funds payable to law firm employer by falsely recording disbursement to take trust funds.
>
> Sentence: Disbarred for one year.

[125] The LSS, in response, contends that Mr. Abrametz's conduct was unprecedented and that there were no cases with a similar factual matrix. It notes that the unusual factors that were relevant to the range of sentences imposed for similar offences included the volume of offences, both as to loans to clients and trust accounting violations; the "bizarre" conduct of issuing cheques to a fictitious person; the cheque endorsement scheme and the dual set of records. It also emphasizes that aggravating factors included the negative impact on the profession, the benefit realized by Mr. Abrametz, his involvement of clients in carrying out his scheme, and that the conduct was intentional, calculated and deceitful.

[126] I recognize that the difficulty that is frequently present in applying the principle of parity – that the circumstances of offences and offenders differ from case to case – was very much present in this case. I cannot take issue with the Hearing Committee's conclusion that "none of the cases identified by the parties could be said to have a similar factual matrix to this case…[and that] "[t]his case did not fall into the category of cases that are generally considered to attract a presumptive penalty of disbarment" (at para 42). That presented a particular challenge in identifying similarities to guide its deliberations.

[127] Focussed as it was on the seriousness of the offences, and on the facts that led it to conclude that they were very serious offence indeed, it is easy to understand why the Hearing Committee relied on disbarment and resignation cases. It is striking that the Hearing Committee believed that confidence in and respect for the LSS by the public and its members, and thus its ability to regulate the profession, were at stake, as "an insufficient penalty would offend the public's sense of justice, and that of the profession" (at para 35). This very strong language reflects the failure to give any or sufficient weight to the mitigating factors that were also relevant.

[128] Mr. Abrametz's lack of a prior record and the fact that he had practiced under supervision without incident for six years, for example, were relevant to public protection and proportionality. Evidence of community service and of general character were also relevant to the circumstances of the offender. While Mr. Abrametz profited from charging 30% for loaning funds by way of advances, he did not misappropriate funds. On the whole of it, it appears that the identification of nothing but disbarment cases and resignation cases that the Hearing Committee used as the best comparators may have been driven more by the fact that they resulted in the loss of the right to practice than that they related to similar offenders or similar circumstances.

[129] I note, by comparison, the following discussion of non-misappropriation cases that resulted in disbarment in *McKenzie* at 26:18:

> Most non-misappropriation cases in which lawyers have been disbarred involve convictions for serious criminal offences. Lawyers have been disbarred as a result of criminal convictions for fraud, tax evasion, conspiring to possess counterfeit money, manslaughter, bribery of public officials, and sexual offences involving children (all involving a breach of trust). Disbarment is not reserved exclusively, however, for cases involving fraud or convictions for serious criminal offences. In a 1997 Ontario case, for example, a lawyer was disbarred on the basis of his admission that he was guilty of a great many allegations of professional misconduct, including failing to serve at least nine clients competently and diligently, failing to honour financial obligations incurred in connection with his practice on at least four occasions, failing to respond to the Law Society regarding complaints on at least 90 occasions, breaching an undertaking to the Law Society, breaching an order of Convocation that he suspend his practice for failing to pay his annual fees, and using his trust account for personal transactions, among other things. In the absence of compelling evidence of mitigating circumstances, Convocation held, the Law Society's duty to protect the public requires disbarment in such a case by reason of the harm caused to the public and the need to ensure the misconduct is not repeated. Similarly, in a 2013 decision, a hearing panel of the Law Society of Upper Canada revoked the licence of a lawyer it found to be ungovernable.
>
> In a 2015 decision of the Law Society of Upper Canada Tribunal (Hearing Division), a lawyer's licence was revoked where he repeatedly lied to clients about the status of their cases and provided clients with forged court decisions to support his false assertions.
>
> …
>
> In a 2016 decision, the Law Society of Upper Canada Tribunal (Hearing Division) ordered the revocation of the licence of a lawyer found guilty of sexual harassment for a second time. The lawyer had aggravated his misconduct by telling a lawyer who had disclosed an incident of sexual harassment to a Law Society investigator that she should have lied to the investigator.

[130] This discussion deals with Ontario decisions, which are of less significance from the perspective of comity and as precedents than those in Saskatchewan. It is, however, a helpful reminder of the approach that is taken to disbarment, the ultimate penalty, and the nature of the

conduct that attracts that sanction. It is consistent in tone with decisions made by Saskatchewan disciplinary bodies and this Court. Notably, all of the Saskatchewan disbarment cases identified by the Hearing Committee involved the misappropriation of funds, or, in the *Oledzki v Law Society of Saskatchewan*, 2010 SKCA 120, 362 Sask R 86 case, forgery of testamentary documents in an attempt to financially benefit members of the lawyer's family – in substance, an attempt to misappropriate client funds.

[131] In my respectful view, the Hearing Committee erred in law in its application of the parity principle, as a consequence of its flawed approach to the aggravating and mitigating factors. That is so because parity relates to the imposition of a similar sentence based on similarities in the offenders and the circumstances. These errors in the application of the parity principle necessarily resulted in a failure to properly apply the proportionality principle, as parity bears on proportionality.

[132] To be clear, this should not be taken as having decided that disbarment cannot be considered as a possible sanction by the Hearing Committee when it rehears this matter. The decision as to what sanction is to be imposed is for the Hearing Committee, within the limits of its discretion. Nor should it be taken as meaning that I do not agree that Mr. Abrametz did not commit serious offences or that his conduct was not deserving of a sanction that reflects that undeniable fact.

VI. CONCLUSION AND COSTS

[133] In the result, I would allow Mr. Abrametz's appeal of the Penalty Decision and remit the matter of sentencing to the Hearing Committee for rehearing.

[134] As to costs, while Mr. Abrametz did not appeal the Costs Award, he seeks the following relief in relation to costs as a result of his successful appeal of the Penalty Decision:

(a) costs of this appeal;

(b) an order setting aside the Costs Award made by the Hearing Committee; and

(c) costs of his February 14, 2019 application to this Court to stay the execution of the Penalty Decision pending the hearing of his appeals.

[135] In *Abrametz SC*, costs were awarded to the LSS in the Supreme Court of Canada and in *Abrametz CA*. Although those decisions dealt only with the Stay Decision, and not the Adjournment or Penalty Decisions, Rowe J. did not limit the costs award in *Abrametz SC* on that basis. For that reason, I would grant costs of this appeal to Mr. Abrametz only in relation to the proceedings that occurred after the decision in *Abrametz SC*, under Column 3 of the Tariff. I would also grant costs on the same basis to Mr. Abrametz in relation to his February 14, 2019 application to stay the execution of the penalty order granted by the Penalty Decision, that was made by Leurer J.A. on February 22, 2019.

[136] I would also set aside the Costs Award made by the Hearing Committee. That award was made in the context of the Penalty Decision and was accordingly based on the Hearing Committee's findings and reasoning, which will be reconsidered when it rehears the matter. For that reason, the matter of costs should be assessed by the Hearing Committee after it has determined the penalty to be imposed on Mr. Abrametz, in light of its findings and reasoning in what will be a new penalty decision.

Barrington-Foote J.A.

Barrington-Foote J.A.

I concur. "Leurer C.J.S."

Leurer C.J.S.