THE LAW SOCIETY OF ALBERTA
APPEAL PANEL REPORT

BETWEEN:

Ayyman Hammoud

Appellant

v.

The Law Society of Alberta

Respondent

Before: Fred R. Fenwick, Q.C. (Chair)
Anthony G. Young, Q.C.
Amal Umar
Gillian Marriott, Q.C.
Glen Buick
Derek Van Tassell, Q.C.
Cal Johnson, Q.C.
Dennis Edney, Q.C.

Heard: June 30, 2014

Counsel: Rodney W. MacKenzie, for the Appellant
Rocky Kravetsky, for the Respondent (Law Society of Alberta)

DECISION

INTRODUCTION

1. Mr. Hammoud had a difficult history with both his academic endeavours and his Articles of Clerkship with the Law Society. His law school education was interrupted between 2002 and 2005 by way of being expelled from the University of Calgary during his third year of law school for an assault upon a professor for which he pled guilty in criminal court.

2. Following graduation from University of Alberta Law School in 2005, his Articles were interrupted between 2006 and 2009 when he withdrew his application for admission in April of 2006, and again in 2009 - 2010 when he was suspended from the Bar Admission (CPLED Course) for incidents involving verbal altercations with CPLED staff.

3. While suspended from the CPLED program, Mr. Hammoud found it necessary to find a new principal but did not disclose his status as a suspended CPLED student.

4. Arising out of the incidents during his protracted period of Articling, Mr. Hammoud was charged with citations involving:

    a) Failure to be properly candid with the Law Society concerning the particulars of his assault upon a professor while he was at law school.

    b) "Conduct unbecoming" with respect to:

        - harsh conversations he had with CPLED staff when disappointed with a mark, and

        - further harsh conversations he had had with a Calgary police officer when found in and searched as a passenger of a motor vehicle which had been transporting marijuana, and

        - an alleged attempted physical assault upon one of his principals during his Articles of Clerkship.

    c) Misleading one of his potential principals about his status as a student, suspended from the CPLED program as a result of previously mentioned verbal altercations with the CPLED staff.

5. The Hearing Committee found Mr. Hammoud guilty of four citations arising out of his behavior during his Articling year(s) and imposed a sanction of "deregistration" as a student, which is argued to be an effective disbarment for an articling student.

6. Mr. Hammoud appeals both the findings of guilt and the sanction.

7. An Appeal Hearing was held June 30, 2014, at which this Appeal Panel reviewed extensive Briefs prepared by counsel for Mr. Hammoud and by counsel for the Law Society and as well heard verbal presentations from each side. The Appeal Panel reserved its decision to be rendered in writing and by this decision, dismisses the appeal as against both conviction and sanction and upholds the findings of the Hearing Committee.

JURISDICTION

8. A member of the Law Society may appeal to "the Benchers" with respect to a finding of guilt by a Hearing Committee (*s. 75 Legal Profession Act)*. The procedure to be followed at the Hearing by Benchers is set out in s. 76 of the *Legal Profession Act* and the appeal committee is referred to in that section as a "panel of Benchers". In this decision we will

refer to the appeal committee as the "Appeal Panel" as per s. 76, and to distinguish it from the statutory "Appeal Committee" (*s. 51 LPA*) which performs a different function (appeals from complaint dismissals).

9. Jurisdiction was established pursuant to the Law Society's Procedure Guidelines in the Member Conduct Appeal Guideline:

   a) A quorum of eight Benchers (seven are necessary for a quorum) was present.

   b) The Benchers composing the Appeal Panel together with counsel for Mr. Hammoud and the Law Society confirmed that they had received copies of the Hearing Record (that is to say the transcript of the Hearing) and the Hearing Report (the Decision of the Hearing Committee).

10. Counsel for the Appellant and the Respondent confirmed jurisdiction and raised no objection to the composition of the Appeal Panel.

OPEN HEARING

11. Counsel for the Member and counsel for the Law Society confirmed that the hearing of the appeal would be an open hearing.

GROUNDS OF APPEAL

12. Mr. Hammoud's Notice of Appeal posed ten numbered grounds of appeal plus an additional three numbered grounds of appeal.

13. Mr. Hammoud's Appellant's Brief was more constrained and stated four issues for the appeal:

   (1) That the Hearing Committee erred when they concluded that the standard of proof at the Hearing was one of the civil standard of a balance of probabilities.

   (2) That the Hearing Committee erred when they concluded that there was not a reasonable apprehension of bias emanating from the fact that one of the Committee Members knew a witness.

   (3) That the Hearing Committee erred when it found as a fact that the Appellant misled the Law Society of Alberta (disclosure of the assault on the professor).

   (4) That the Hearing Panel erred when it imposed the sanction of deregistration on the Appellant.

14. In additional written materials, the Appellant argued further grounds:

(5) (Number 11 in the original Notice of Appeal) That the Hearing Panel erred in failing to sever the citations.

(6) (Ground 4 in the original Notice of Appeal) That the presence of Calgary police officers at the hearing tainted the Hearing Committee and gave rise to a reasonable apprehension of bias.

STANDARD OF REVIEW

15. This is an internal appeal, that is to say an appeal from one statutory, administrative tribunal (the Hearing Committee) to another statutory committee (the Appeal Panel). The procedure is referred to throughout in the *Legal Profession Act* as an "appeal" , the procedures are analogous to an appeal (the Hearing Committee hears the evidence and Appeal Panel reviews a transcript and Briefs) and in principle ought to be regarded by the Appeal Panel as such.

16. The Appeal Panel therefore gives deference to the Hearing Committee on findings of fact and mixed fact and law (including sanction), i.e. a standard of review of "reasonableness". On issues of law, which would include the stating of an appropriate standard of proof within the Hearing, or jurisdictional issues (including bias), the standard of review is "correctness".

17. The significance of the standard of review for this case concerns Appellant's materials and argument which could be regarded as an invitation to have the Appeal Panel substitute its view of findings of fact or conclusions drawn from mixed fact and law, for that of the Hearing Committee.

18. The Appeal Panel is alive to issues of the correctness of the law in issues such as the selection of an appropriate standard of proof, allegations of jurisdictional error (for example allegations of bias) and argument of substantial misapprehension of the evidence. However, in keeping with our view of this process as an "appeal", appropriate deference will be given to the Hearing Committee which was charged with the original duty of setting a procedure for and of the hearing of the evidence, and making primary findings of fact arising out of that hearing of the evidence.

STANDARD OF PROOF

19. The Appellant argued, as a matter of law, that because a conviction would render Mr. Hammoud liable for an effective disbarment that the onus of proof at the Hearing ought to have been raised from a civil burden of a "balance of probabilities" to that of "beyond a reasonable doubt" or "clear, convincing and cogent" proof.

20. The Appeal Panel accepts that there may seem a certain superficial "common sense" attraction to the point of view that the more serious the allegations (or perhaps the more serious the sanction), the more serious the proof ought to be. However, we note the corollary to that is that litigants whose issues were seen by the trier of fact as subjectively less serious would be somehow due a lesser standard of justice than those whose issues were viewed subjectively as more serious, and this would not be proper.

21. In any event, these issues have been put to rest by growing appellate guidance including:

    a) *F.H. v. McDougall*, 2008 SCC 53;

    b) *Moll v. College of Alberta Psychologists*, 2011 ABCA 110;

    c) *Fitzpatrick v. Alberta College of Physical Therapists*, 2012 ABCA 2007;

    which make it clear that there is only one civil standard of proof at common law, that is a proof on a balance of probabilities. (to paraphrase Rothstein J. in *F.H. v. McDougall*).

22. The Hearing Committee at page 6 of the Hearing Committee Report correctly identified the standard of proof quoting both *F.H. v. McDougall* and *Moll v. College of Alberta Psychologists*.

23. *F.H. v. McDougall* speaks not only to the movement towards a single civil standard of proof, but also the job of an appellate body reviewing findings of fact and conclusions reached at trial (again paraphrasing from *F.H. v. McDougall*):

    a) Paragraph 46,

       As difficult as it is, a Trial Judge must make a decision about facts; and

       It is the job of a Trial Judge to decide the circumstances which suggest that an allegation is inherently improbable or probable.

    b) Paragraph 55,

       An appellate court is only permitted to interfere with the factual findings when the Trial Judge is shown to have committed a palpable and overriding error or made findings of fact that are clearly wrong, unreasonable or unsupported by evidence; and

       Where there is some evidence to support an inference drawn by the Trial Judge, an appellate court will be hard pressed to find a palpable and overriding error.

    c) Paragraph 72,

> Assessing credibility is the job of the Trial Judge and due heightened deference.

24. Therefore, in the context of this appeal, to the extent that the Hearing Committee made clear findings of credibility, made clear findings as to the probability or improbability of a fact or an inference, or preferred one conclusion or another based on an examination of conflicting evidence, probability/improbability, and corroboration, those findings of fact or findings of mixed fact and law are due deference.

BIAS ARISING OUT OF ONE OF THE HEARING COMMITTEE MEMBERS KNOWING ONE OF THE WITNESSES (DR. P)

25. It is argued that because one of the Hearing Committee Members had a passing acquaintance with Dr. P, that this gives rise to a reasonable apprehension of bias.

26. The issue is of some significance as Dr. P was the University Professor that Mr. Hammoud was found to have assaulted which led to a guilty plea, probation, breach of probation, and then arguably a misreporting (or under reporting) of the conviction and the probation issues to the Law Society at admission as an articled student.

27. Mr. Hammoud's position at the Hearing and the Appeal was that the assault was substantially less serious (a shoving match) than alleged by Dr. P. and pled guilty to by Mr. Hammoud (unprovoked punches to the head) and therefore justified the reporting of the lesser particulars to the Law Society in his application for admission.

28. The Hearing Committee would have to decide if it believed Dr. P.'s or Mr. Hammoud's version of the incident and any close relationship between the Committee member and the witness might give rise to a bias or reasonable apprehension of bias.

29. In resolving the matter, the Hearing Committee correctly identified the test as set out in *Boardwalk Reit LLP v. Edmonton (City)*, 2008 and *Wewaykim Indian Band v. Canada*, 2003 SCC 45 including:

> There is a strong presumption of judicial impartiality:
>
> - The presumption carries considerable weight and the law should not carelessly evoke the possibility of bias,
> - To have any legal effects an apprehension of bias must be reasonable, and the grounds must be serious and substantial,
> - Real likelihood or probability is necessary not a mere suspicion.

30. The record shows that the Committee Member disclosed at the Hearing that the witness Dr. P had lived at some time in the past "around the corner" from the Committee Member

and that her relationship with the witness was restricted to minimal conversation in passing. In fact, she did not recognize the name of Dr. P. until he showed up to testify.

31. Mr. Hammoud objected at the hearing on the basis of bias or reasonable apprehension of bias but could show no reasons to believe that the Hearing Committee Member would "favour" (the required test) the testimony of a distant ex-neighbor to the exclusion of her duty of judicial impartiality.

32. The Appeal Panel considers the matter both properly handled and disposed of by the Hearing Committee. The nature of the (distant) relationship was disclosed and Mr. Hammoud was given the opportunity to consider his position, put forward any evidence of actual bias and make argument before the Hearing Committee. No evidence or other grounds as per *Boardwalk* was presented or argued and we find that the Hearing Committee properly decided that the presumption of impartiality had not been displaced.

33. Mr. Hammoud argues in supplementary material that the presence of Calgary police officers at the hearing provided evidence of actual bias.

34. Counsel for Mr. Hammoud argues in his Surrebuttal Brief:

    a) (19) The insistence by the Law Society on the police presence had the effect of tainting the Hearing Committee's view of Ayyman [Mr. Hammoud] even before the hearing began, and thus gives rise to a reasonable apprehension of bias or actual bias in that prejudicial preconceptions were likely formed by the Hearing Committee.

    b) (20) In any event, the police presence and the manner in which the Law Society proceeded in terms of how they approached the Hearing Committee (in secret and without notice) was prejudicial and improper.

35. The evidence before the Hearing Committee is set out at pages 96 – 98 of the Hearing Report which makes it clear that the police officers were present at the request of the Law Society as an administrative matter, as opposed to the request of the Hearing Committee or an evidentiary matter.

36. To the extent that paragraphs 19 and 20 of Mr. Hammoud's Surrebuttal Brief is an invitation to the Appeal Panel to find that there was an improper, secret, ex-party contact between the Law Society Counsel and the Hearing Committee which prejudiced the hearing, the Appeal Panel finds that such a suggestion is completely without evidentiary or legal merit and declines to make such a finding.

DID THE HEARING COMMITTEE ERR WHEN IT FOUND AS A FACT THAT MR. HAMMOUD MISLED THE LAW SOCIETY OF ALBERTA

37. This is the allegation that Mr. Hammoud had not fully reported the nature of his assault upon Dr. P, and the consequences of that assault which included a guilty plea, the acceptance of Dr. P.'s version in the particulars of the guilty plea, a pre-sentence report, a sentence which included probation and community service, and a breach of probation for not finishing his ordered community service hours within the probationary period.

38. Mr. Hammoud suggests (amongst other things) that he was consistent and uncontradicted in his evidence that the assault against Dr. P was some sort of "shoving match", did not involve him punching Dr. P and he ought not to have been found guilty on that citation based on such allegedly contradictory evidence.

39. As a starting point, the circumstances of Mr. Hammoud making reports to the Law Society of his convictions included the fact that Mr. Hammoud was on the verge of entering into another student relationship (the CPLED course). Any reasonable person would have known that an earlier assault based on a student being disappointed with marks, would have relevance to exactly what Mr. Hammoud was proposing to do with the Law Society at that time (enter into a pupil-student relationship), and that a fulsome as opposed to a one sided report would be necessary.

40. Going on from there, the Appeal Panel refers back to comments made by the Supreme Court of Canada in *F.H. McDougall* concerning the difficult but important job of the trier of fact. It is clear from the Hearing Report transcript that in deciding whether or not Mr. Hammoud's "minimized" version of the Dr. P assault was appropriately fulsome disclosure, the Hearing Committee had the advantage of additional evidence developed more or less contemporaneously with the assault. That is to say, a plea and a finding of guilt based on particulars of punching, a pre-sentence report which included particulars of punching, a sentence which included probation, and breach of that probation.

41. In weighing their evidence, the Hearing Committee could have, if necessary, weighed the evidence of Dr. P against the evidence of Mr. Hammoud in terms of probability and improbability and would have been entitled to decide as a fact as between the two witnesses who they believed. In fact, however, the Hearing Committee had much more evidence than this. The Hearing Committee was entitled to find as it did, that Mr. Hammoud substantially misrepresented his involvement in the Dr. P assault and to the extent that this is a finding of fact based on the hearing of evidence and drawing conclusions from that evidence, the Appeal Panel defers to the Hearing Committee.

DID THE HEARING COMMITTEE ERR WHEN IT IMPOSED A SANCTION ON MR. HAMMOUD EQUIVALENT TO A CONSTRUCTIVE DISBARMENT

42. It is clear that the sanction imposed upon Mr. Hammoud, deregistration as a student prior to his admission to the Bar, is an impediment to Mr. Hammoud's career desires to be accredited as a member of the Law Society of Alberta. It is less clear that the finding is the equivalent of a disbarment.

43. However, assuming deregistration to be the functional equivalent of a disbarment, for sake of argument at this appeal, the question for the Appeal Panel would still be whether the imposed sanction was within the bounds of reasonable choices open to the Hearing Committee, not whether in retrospect, the Appeal Panel would have done differently.

44. Mr. Hammoud's arguments in this regard include:

a) Similar, and arguably worse, precedent cases had not involved a functional disbarment and thus Mr. Hammoud's sanction was in disparity to other cases cited.

b) Mr. Hammoud's offences do not involve financial impropriety or client driven complaints.

c) Insufficient weight was put on Mr. Hammoud's rehabilitative efforts including an (incomplete) anger management course and a successful clerkship with a Calgary practitioner.

45. The Appeal Panel reiterates the points about the difficult but necessary job of the Hearing Committee and the deference owed factual and combined legal and factual decisions. It is clear that the Hearing Committee considered their factual findings not only in light of the isolated incidents which led to the citations but what that meant based on the evidence and law, in terms of the governability of Mr. Hammoud.

46. In the absence of a palpable and overriding error of law or misapprehension of fact, it is not the proper duty of the Appeal Panel to substitute its decisions about sanction (based on a paper-based view of the hearing) for that of the Hearing Committee which actually heard the evidence live and wrestled with the initial findings of fact.

47. To be clear, whether or not Mr. Hammoud's deregistration is a de facto disbarment or not, it is a severe sanction, perhaps the most severe one that the Hearing Committee could impose. Having said that, deregistration was clearly one of the acceptable alternatives in this situation:

a) Mr. Hammoud was found to have not only assaulted Dr. P years earlier, but misrepresented that assault when Law Society rules, forms, and any sensible view

of the purposes of such disclosure required full disclosure of the Dr. P events. Even if Mr. Hammoud now in retrospect disagreed with his admissions made in court the correct course in dealing with the Law Society would have been disclosure and discourse over the disagreements.

b) Mr. Hammoud got into verbal altercations with CPLED staff over disappointment with marks which lead to Mr. Hammoud being obligated to withdraw from the CPLED course. Years after the Dr. P. incident, Mr. Hammoud was still involved in being abusive to teaching staff.

c) As his Articling year fell apart around him, Mr. Hammoud, in his attempt to obtain a new principal, misled that principal about his status as a suspended CPLED student.

Under all of the circumstances the Hearing Committee was entitled to decide that Mr. Hammoud did not possess the integrity or the governability, based on the proven events to allow him to continue on the path to admission to practice and that the overriding public protection duty of the Law Society allowed such a severe sanction to be considered.

48. The Appeal Panel declines the invitation to substitute its view of an appropriate sanction for that of the Hearing Committee.

FAILURE TO SEVER

49. It is argued that as a matter of procedural fairness that the four citations should not have been heard together at the original Hearing.

50. The argument concerning failure to sever was raised first at this Appeal and not raised at the Hearing and thereby becomes not only procedurally difficult for the Appeal Panel but in the development of this case, lacking an appropriate factual matrix upon which a decision to sever could be based.

51. Having not been raised at the Hearing:

- Mr. Hammoud did not develop a factual or legal argument outlining any alleged prejudice to him.
- The Law Society was not allowed to develop its case concerning the factual and legal nexus between the evidence and issues in the citations set out.
- Legitimate issues of judicial economy and desire to avoid a multiplicity of proceedings were not developed by the Hearing Committee.

52. Under all of the circumstances, it is not apparent to the Appeal Panel that an order for severance ought to have been given and is not satisfied that Mr. Hammoud at appeal, has given any principled reason to send this matter back for rehearing in front of one (or perhaps four) different Hearing Committees.

GENERAL COMMENTS

53. There was limited discussion at the Appeal concerning Mr. Hammoud's future professional plans and his status as a deregistered student. This did not form part of the Hearing Record or Hearing Decision and therefore is of limited relevance to this Appeal.

54. However, the Appeal Panel does state that in upholding the Hearing Committee's decision concerning findings of guilt and sanction on the citations as against Mr. Hammoud, it makes no finding or comment as to Mr. Hammoud's future attempt, if any, at reinstating his status as a student-at-law preparatory to admission to the Bar of the Province of Alberta.

55. Lawyers that have been disbarred are entitled to make application for readmission. This Appeal Panel makes no finding on how stringent those requirements ought to be generally or for Mr. Hammoud particularly.

56. The outcome of this appeal however is reasonably straightforward. The Hearing Committee made factual decisions leading to a conclusion of a lack of integrity, the sanction for which was deregistration as a student. This Appeal Panel has not found overriding errors to justify appellate interference with those findings and at this stage, Mr. Hammoud's future with the Law Society, if any, will need to be dealt with by looking forward to rehabilitation as opposed to backwards to perceived inequities in the process that brought him to this point.

CONCLUDING MATTERS

57. Mr. Hammoud's appeal is dismissed in its entirety and pursuant to section 77(1)(a)(i) of the *Legal Profession Act*, the Hearing Committee's findings are confirmed.

WRITTEN REASONS delivered this 6th day of October, 2014.

Fred R. Fenwick, Q.C., Chair

Anthony G. Young, Q.C.

Amal Umar

Gillian Marriott, Q.C.

Glen Buick

Derek Van Tassell, Q.C.

Cal Johnson, Q.C.

Dennis Edney, Q.C.