

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

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF SANJEEV SHARMA
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Walter Pavlic, QC – Chair and Benchers
Glen Buick – Former Benchers
Anthony Young, QC – Lawyer Adjudicator/Past-President

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Dale Ellert – Counsel for Sanjeev Sharma

Hearing Date

October 16, 2019

Hearing Location

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

HEARING COMMITTEE REPORT

Overview

1. Mr. Sharma obtained his law degree in India in 1987. He worked in the banking industry in India until 2005. In April 2016, he obtained his NCA Certificate of Qualification and commenced his articles of clerkship in Alberta. After approximately 10 weeks of full-time articles, Mr. Sharma's principal had concerns with both his competency and abilities and determined that she could no longer adequately supervise him on a full-time basis. It was determined that he would continue to work with her but only for one day per week. In March 2017, his principal informed him that she would no longer serve as his principal and suggested that he obtain alternate employment. Mr. Sharma then articulated with a new principal effective March 20, 2017.
2. When Mr. Sharma approached his new principal, he did not advise him that he had previously only worked part-time. He also advised his new principal that he only had three or four months remaining in his articles and that the reason he left his first principal was because she was not very busy and there was insufficient workspace in her office.

3. In June 2017, Mr. Sharma contacted the Law Society of Alberta (LSA) to coordinate his admission to the Bar. At that time, the LSA was aware that he had not been working full-time and specifically inquired as to how many hours Mr. Sharma had been working while employed with his first principal. In response, Mr. Sharma stated that he had been working between September 16, 2016 and March 7, 2017 for three days per week at approximately 25-26 hours per week. He also stated that the hours depended on the assignments worked. This was untrue.
4. The LSA began to investigate Mr. Sharma and determined that he in fact had only been working one day per week from September to March 2017. When confronted with this information, Mr. Sharma stated that he had made a mistake. He subsequently admitted that he may have misrepresented the hours of work to get more articling credit but also stated that he mixed up the hours due to confusion and nervousness.
5. When Mr. Sharma was questioned as to why his working hours were reduced, he initially advised the LSA that there was a lack of space in the office, which prevented him from working. When confronted, he stated that the reduction came as a result of errors that he had made and because his first principal could not take the time to supervise him. Mr. Sharma also initially did not recall that his first principal had raised concerns with respect to his competence.
6. On October 16, 2019, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Sharma, based on two citations:
 - 1) it is alleged that Sanjeev Sharma failed to be candid with the Law Society of Alberta and that such conduct is deserving of sanction; and
 - 2) it is alleged that Sanjeev Sharma failed to be candid with his principal and such conduct is deserving of sanction.

Summary of Decision

7. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Mr. Sharma, for the reasons set out below, the Committee finds Sanjeev Sharma guilty of conduct deserving sanction on the two citations pursuant to section 71 of the *Legal Profession Act* (the *Act*).
8. The Committee also finds that, based on the facts of this case and the serious concerns about integrity raised thereby, the appropriate sanction is de-registration, equivalent to disbarment. In accordance with section 72 of the *Act*, the Committee orders that Sanjeev Sharma be de-registered from membership in the LSA as a student-at-law, effective immediately. A Notice to the Profession to that effect is to be issued, pursuant to section 85 of the *Act*.

9. In addition, pursuant to subsection 72(2) of the *Act*, the Committee orders that Mr. Sharma must pay costs in the amount of \$14,857.75, prior to being reinstated, if he makes a future application for reinstatement.

Preliminary Matters

10. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. A public hearing into Mr. Sharma's conduct proceeded.

Statement of Admitted Facts/Background

11. A Statement of Admitted Facts (Statement) was entered into evidence by counsel for the LSA. The Statement had been signed by Mr. Sharma on July 19, 2019 and his counsel made no objection to its admission. It is important to note that the Statement, which was not an Agreed Statement of Facts, did not contain any admission of guilt and expressly disputed that Mr. Sharma's conduct was deserving of any sanction.

Analysis

12. Integrity is of fundamental importance to the legal professional. It is also a necessary requirement for admission to the bar of Alberta. The very first professional standard listed in the *Code of Conduct* reads:

Chapter 2 – Standards of the Legal Profession

2.1 Integrity

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

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

13. The *Code of Conduct* also details out the duties of the articling student and reads:

Chapter 6 – Relationship to Students, Employees, and Others

6.2 Students

6.2-3 Duties of Articling Student

An articling student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

Citation No. 1

14. The Committee is of the view that Mr. Sharma lied to his regulator.
15. Mr. Sharma was asked the following question in an email dated June 21, 2017 by a representative of the LSA regarding missing documentation necessary for his call to the bar:

I note in the Certificate of Principal that your last 6 months with Ms. Olaniyan was done part time. This will affect your Bar call date as you have to complete 12 full months of articles. Would you please send me an email as what part time consisted of? Eg. 20 hrs/week thereby getting 3 months credit instead of 6?
16. Mr. Sharma replied on July 13, 2017:

In response to your email, I confirm that my part time with my previous Principal for the period between September 16, 2016 to March 2017 was for 3 days a week and about 25-26 hours a week. The hours sometimes depend on the assignment working for some extended time.
17. Mr. Sharma's reply was untrue. In fact, he had worked only one day per week during the period specified. When asked why he would inform the LSA that his part time articles were three days a week when they were only one day a week, Mr. Sharma initially stated "it was a mistake and unintentional." After being repeatedly challenged by the LSA on this response Mr. Sharma reluctantly admitted that he "may have misrepresented the hours to get more articling credit."
18. The only reasonable conclusion that the Committee can draw from the facts is that Mr. Sharma did, in fact, misrepresent his hours to get more articling credit. It took Mr. Sharma over 3 weeks to answer the question posed by the LSA. He had plenty of time to ensure that the information provided was correct. Instead, he falsely answered the question in a way that gave him an improper advantage or credit.
19. Mr. Sharma's demonstrated lack of integrity goes to the root of lawyer regulation. If the LSA is unable to reply upon the honest statements of its members, it will be difficult, if not impossible, to regulate the profession.

20. There is no question that Mr. Sharma failed to be candid with the LSA and that such conduct is deserving of sanction.

Citation No. 2

21. Mr. Sharma admits that he did not inform his new principal that he “had been articling part time” with his previous principal since September 2016. He told his new principal that he only had three or four months to go for his articles. In addition, he stated the reason that he left his first principal was because she was not very busy and there was insufficient workspace in her office. These statements were neither truthful or candid.
22. Candour is the quality of being forthcoming. Omitting or modifying salient information in situations where the reasonable person would expect that it would be disclosed demonstrates a lack of candour. Guidance on this aspect of a lawyer’s conduct may be taken from Rule 3.2-3 of the *Code of Conduct*. It states:

When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

A student-at-law similarly must be honest and candid and must inform his or her principal of all information known to the student that may affect the interests of the principal.

23. Mr. Sharma coloured or omitted the facts about his previous employment that should have been disclosed to his new principal. He should have told his new principal about his previous articling experience including an accurate description of the reasons and circumstances for the termination of that relationship. This would have included information about his prior principal’s concern with his competency and abilities. It does not matter that this information was not requested. Mr. Sharma coloured the facts by inaccurately saying that his previous principal “was not very busy and there was insufficient workspace in her office for him.” The Committee is of the view that Mr. Sharma did not fully and accurately inform his new principal in the hope of gaining an advantage. This time, it was to obtain employment in order to complete his articles.
24. The Committee finds that this citation has been proven on a balance of probabilities and that Mr. Sharma’s conduct is deserving of sanction.

Decision on Sanction

25. Counsel provided several cases which we have reviewed and considered. These precedents are not binding on the Committee but do provide useful commentary and guidance. Of the cases presented, the decisions in *Law Society of Alberta v. Ihensekhien-Eraga*, 2019 ABLS 16 (CanLII) and *Law Society of Alberta v. Cattermole*, [2008] L.S.D.D. No. 168 (Q.L.) are the most relevant to this matter. Both of those involve

circumstances where an articling student made misrepresentations to advance her position in the articling process.

26. In *Cattermole*, the student, in the process of completing her CPLED assignment, copied portions of another student's assignment into her own. When questioned, the student lied to both representatives of CPLED and her principal and stated that she was never in the possession of and had never seen any previous assignments. Shortly thereafter, the student wrote a lengthy and detailed letter of explanation and apology in which she fully admitted her wrongdoing. The *Cattermole* decision also notes significant mitigating factors including a very difficult upbringing, a very recent breakup in a personal relationship, the sudden death of her father and family issues surrounding her father's death. Ms. Cattermole also produced a letter from her physician stating that she suffered from acute depressive disorder and was in the care of a psychologist. In that particular case, the Hearing Committee found that her being removed from the CPLED program, being terminated from her law firm, and having her articles delayed by two years were sufficient sanction. However, they did not relieve her of the requirement to pay costs.
27. The *Ihensekhien-Eraga* decision involves much more egregious conduct. In that case, Ms. Ihensekhien-Eraga, a lawyer with 15 years of experience in Nigeria, sought to reduce the term of her articles based upon her previous experience. As part of that process, she forwarded a factum to the LSA's Membership Department as a demonstration of her ability. It was later discovered that the factum was not her own work. When challenged, Ms. Ihensekhien-Eraga insisted that she worked on the factum and further went on to state that as a former Crown Counsel in Nigeria, she well knew the implications of lying to the LSA. It was found that her deception was deliberate, calculated, shrewd and an attempt to mislead the LSA.
28. Once the deception was uncovered, Ms. Ihensekhien-Eraga admitted her guilt. The Hearing Committee then dealt with the sanction. The Hearing Committee was advised by her counsel that Ms. Ihensekhien-Eraga was experiencing a number of stressors that gave rise to her conduct. Specifically, Ms. Ihensekhien-Eraga had recently moved to Canada and had to cope with a (redacted) issue and was responsible for raising her three young children on her own as her husband had moved to Saskatchewan to find appropriate work. Ms. Ihensekhien-Eraga further apologized for her conduct and pledged to be an excellent member of the LSA. She also provided excellent character references as well as evidence of early attempts at psychological counseling.
29. That Hearing Committee found that Ms. Ihensekhien-Eraga did admit responsibility at a relatively early stage of the proceedings, thereby avoiding a contested hearing, noted that her admission of guilt was a mitigating factor and found her verbal apology to be a consideration in her favour. They also found her emotional contrition to be sincere. After considering those circumstances, that Hearing Committee found that a one-year suspension would be an appropriate sanction.

30. In this matter, by contrast, Mr. Sharma disputes that his conduct is deserving of any sanction. Throughout the course of his evidence, Mr. Sharma maintained that his articles were not terminated as a result of his incompetence but rather as a result of there not being sufficient space to allow him to work in the office. Mr. Sharma's explanation is contrary to the evidence of his first principal, who explained that she had ongoing issues with Mr. Sharma's competence since September 2016, and also stated there was no shortage of office space available, as she rarely attended at the office and conducted 90% of her work from home.
31. Mr. Sharma also described his misrepresentations to the LSA as a "mistake," and failed to demonstrate remorse. In fact, the comments of Mr. Sharma demonstrate that he views himself as the victim in this matter indicating that it was a very "hard time" for him when his article was terminated and that the proceedings for the last two and a half years have "demoralized" him and that he has been "under stress for a very long time now." It was only in response to questions from his counsel that he apologized for misleading the LSA. He did not appear to the Committee to appreciate the duty of a member to be forthright and honest in dealings with the regulator.
32. The LSA has asked that Mr. Sharma be de-registered. The Committee agrees that this sanction is warranted in the case of Mr. Sharma.
33. De-registration is an extreme measure. The cases provided by counsel guide us as to the circumstances as to when it ought to be utilized. In *Ihensekhien-Eraga*, Ms. Ihensekhien-Eraga lied to the LSA on six separate occasions. It was only through considerable effort and investigation on the part of the LSA that her lies were revealed. In that case, she received a suspension for 12 months and was ordered to pay costs of \$17,000.00.
34. In *Cattermole*, a student was found to have plagiarized her CPLED work and was suspended. Given the fact that her articles had been delayed by two years, no further sanction, other than costs, was applied.
35. In *Law Society of Alberta v. Zimmerman*, [2006] L.S.D.D. No. 6 (Q.L.), a student was found guilty of stealing small amounts of money from her part-time employment and also convicted of fraud and forgery charges arising of her attempts to deceive a lender into advancing a loan to her. This activity involved forging paystubs. In that case, the student was de-registered.
36. In *Law Society of Alberta v. Rigler*, 2008 LSA 10 (CanLII), the student misrepresented to the LSA the circumstances surrounding a motor vehicle related alcohol charge. He provided a Statutory Declaration that was not true. When the LSA pursued the issue with him, Mr. Rigler did not tell them that he had lied in the Statutory Declaration. In that case, Mr. Rigler provided an agreed statement of facts and admission of guilt. Although the LSA sought termination of Mr. Rigler's registration, the Hearing Committee found

that Mr. Rigler had admitted his guilt and displayed remorse for his conduct. It noted that the experience had had a major impact on his life and legal career and determined that a three-month suspension would be appropriate.

37. Mr. Sharma admits several facts in his Statement, including that he misrepresented his hours to the LSA, and that he should have made his part-time articling status clear to his principal. However, the Hearing Committee is of the view that that Mr. Sharma failed to provide a meaningful apology and demonstrate the remorse that one would have expected in all of these circumstances. That, combined with the lack of any evidence regarding any particular hardship or difficulty giving rise to his behaviour, causes us to consider de-registration as being appropriate in all of these circumstances.
38. The fact that his second principal has continued to employ him and has offered to maintain his employment after his articles are complete may be regarded as a mitigating factor, as is the fact that there have apparently been no reported issues with Mr. Sharma's conduct since he started working with his second principal in March 2017. However, Mr. Sharma's second principal was not called to give evidence. There was no evidence whatsoever provided in support of Mr. Sharma's character nor was there any evidence providing any explanation for his conduct.
39. In all these circumstances, the Hearing Committee concludes that de-registration is appropriate.

Concluding Matters

40. Effective immediately, the Hearing Committee orders that Mr. Sharma be de-registered as a student.
41. Pursuant to section 49(5)(b) of the *Act*, termination of registration is equivalent to disbarment. Accordingly, pursuant to section 85 of the *Act*, a Notice to the Profession regarding Mr. Sharma's de-registration is required.
42. There is no need for a referral to the Attorney General.
43. Pursuant to subsection 72(2) of the *Act*, if Mr. Sharma makes a future application for reinstatement of his registration, the Committee orders that he pay the costs for this hearing in the amount of \$14,857.75, prior to being reinstated.
44. This was a public hearing and the exhibits and other hearing materials, transcripts, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, January 7, 2020.

Walter Pavlic, QC

Glen Buick

Anthony Young, QC