Court of Appeal for Saskatchewan

Docket: CACV3371

Citation: *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81

Date: 2020-07-03

Between:

Peter V. Abrametz

Appellant

And

Law Society of Saskatchewan

Respondent

Before:	Ottenbreit, Leurer and Barrington-Foote JJ.A.
Disposition:	Appeal allowed in part
Written reasons by:	The Honourable Mr. Justice Barrington-Foote
In concurrence:	The Honourable Mr. Justice Ottenbreit The Honourable Mr. Justice Leurer
On appeal from:	Law Society of Saskatchewan Hearing Committee decisions
Appeal heard:	June 12, 2019
Counsel:	Gordon Kuski, Q.C., and Amanda Quayle, Q.C., for the Appellant Timothy Huber for the Respondent

Barrington-Foote J.A.

I. INTRODUCTION

[1] This appeal arises from disciplinary proceedings pursued by the respondent, the Law Society of Saskatchewan [LSS], against the appellant, Peter V. Abrametz. Those proceedings, which began with an audit investigation initiated in 2012, resulted in a January 10, 2018, decision in which a Hearing Committee of the LSS [Hearing Committee] found Mr. Abrametz guilty of four counts of conduct unbecoming a lawyer [Conduct Decision]. The convictions were for breaches of the Law Society of Saskatchewan Rules [Rules] and the version of the *Code of Professional Conduct* [*Code*] that was then in effect. On January 18, 2019, the Hearing Committee ordered Mr. Abrametz disbarred, with no right to apply for readmission as a lawyer prior to January 1, 2021 [Penalty Decision]. Mr. Abrametz has appealed his conviction and the Penalty Decision to this Court pursuant to s. 56(1) of *The Legal Profession Act, 1990*, SS 1990–91, c L-10.1 [*LPA*].

[2] These proceedings were the first LSS disciplinary event of Mr. Abrametz's then 46-year career as a member of the LSS. That event is not yet at an end. Seven years in, the LSS continues to investigate allegations first identified in January 2013 that Mr. Abrametz evaded taxes through transactions which were the basis for three of the four convictions that form the foundation for the present appeal.

[3] Mr. Abrametz has identified five grounds of appeal, relating to four separate decisions made by the Hearing Committee.[1] I have concluded that this appeal turns principally on one of these grounds; that is, that the Hearing Committee erred in its November 9, 2018, decision [Stay Decision] by dismissing Mr. Abrametz's application to stay the proceedings as a result of undue delay constituting an abuse of process. For that reason, the legal question at the heart of this appeal is whether the principles specified in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 [*Blencoe*] – the leading case on delay in administrative

[1] The LSS has published three of these decisions at 2018 SKLSS 8. The references throughout this decision are to the original decisions, not to 2018 SKLSS 8.

proceedings – call for a stay, being the only remedy sought by Mr. Abrametz on the ground of delay.

[4] *Blencoe*, for very good reasons, unambiguously set a high threshold for finding an abuse of process where hearing fairness has not been compromised. As Mr. Abrametz acknowledged, the outcome he seeks is not an easy fit with much of the case law which has applied *Blencoe* in the 19 years since it was decided. I have nonetheless concluded Mr. Abrametz is entitled to the relief he seeks. Broad brush, that is so for two reasons.

[5] First, there are the facts, which disclose a particular mix of proven and alleged wrongdoing by Mr. Abrametz, unexplained and unacceptable delays by the LSS, public interest and professional regulatory considerations, and negative impact on Mr. Abrametz. To err is human. However, the facts in this case tell a troubling and disappointing story about a regulator that should, given its mandate, resources and composition, be a model for others.

[6] Second, there are the insidious effects of delay in judicial and administrative proceedings. In *Blencoe*, LeBel J. (dissenting in part) reminded us that the courts must face into this issue:

> 140 Unnecessary delay in judicial and administrative proceedings has long been an enemy of a free and fair society. At some point, it is a foe that has plagued the life of almost all courts and administrative tribunals. It's a problem that must be brought under control if we are to maintain an effective system of justice, worthy of the confidence of Canadians. The tools for this task are not to be found only in the *Canadian Charter of Rights and Freedoms*, but also in the principles of a flexible and evolving administrative law system.

[7] This comment – which was cited with approval in *Giguère v Chambre des notaires du Québec*, 2004 SCC 1 at para 34, [2004] 1 SCR 3; *Jacobs v McElhanney Land Surveys Ltd*, 2019 ABCA 220 at para 57, [2019] 12 WWR 19; and *Davison v Nova Scotia Construction Safety Association*, 2006 NSCA 63 at para 77, 244 NSR (2d) 321 [*Davison*] – reminds us that timely justice has long been recognized as an essential element of the rule of law. As Lebel J. noted in *Blencoe*, King John assured his subjects in the *Magna Carta* that "[t]o none will we sell, to none will we deny, or delay, right or justice" (at para 146). Regrettably, that assurance has too often been honoured in the breach rather than in the observance.

[8] In *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, the Supreme Court of Canada spoke to the same issue, sounding the alarm on the need for timely justice in civil cases to protect the rule of law. In *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631 [*Jordan*], the Court shone a light on

the culture of complacency toward delays in the criminal context and changed the law in a manner that has resulted in a sea change in criminal practice. These seminal decisions demonstrate an evolution in the Supreme Court's understanding of the impact of, and need to address, delay in the administration of justice. They were an important element of the judicial response to the public's increased scrutiny of the justice system, which – like many long-cherished institutions – has been called to account when the walk does not accord with the talk.

[9] The judicial response to delay in administrative proceedings must, of course, take due account of the principled reasons for judicial deference that shaped *Blencoe* and were reaffirmed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*]. Beyond that, why should less be required of administrative decision-makers than courts? Administrative agencies decide many issues of great importance. As Abella and Karakatsanis JJ. commented in their minority opinion in *Vavilov*:

> [242] Moreover, central to any definition of the rule of law is access to a fair and efficient dispute resolution process, capable of dispensing timely justice (*Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, at para. 1). This is an important objective for all litigants, from the sophisticated consumers of administrative justice, to, most significantly, the particularly vulnerable ones (Angus Grant and Lorne Sossin, "Fairness in Context: Achieving Fairness Through Access to Administrative Justice", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (3rd ed. 2018), 341, at p. 342). For this reason, access to justice is at the heart of the legislative choice to establish a robust system of administrative law (Grant and Sossin, at pp. 342 and 369-70; Van Harten, et al., at p. 17; Régimbald, at pp. 2-3; McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*). As Morissette J.A. has observed:
>
> > … the aims of administrative law … generally gravitate towards promoting access to justice. The means contemplated are costless or inexpensive, simple and expeditious procedures, expertise of the decision-makers, coherence of reasons, consistency of results and finality of decisions.
> >
> > (Yves-Marie Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 236)

[10] With these things in mind, I have concluded there was inordinate delay in the LSS proceedings against Mr. Abrametz that constituted an abuse of process and that those proceedings should have been stayed. In my view, this outcome is consistent with *Blencoe*. If it does represent a step forward from *Blencoe*, I would characterize it as an incremental step that is necessary to enable *Blencoe* to better serve its remedial purpose for the benefit of both those caught up in the machinery of the administrative state and, ultimately, administrative decision-makers themselves.

As such, it is consistent with *stare decisis*: *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 44, [2015] 1 SCR 331; *R v Comeau*, 2018 SCC 15, [2018] 1 SCR 342.

II. BACKGROUND

[11] There were many twists and turns in the road travelled by the LSS and Mr. Abrametz in the course of this investigation and prosecution. It is necessary to review the facts at some length to provide the context required to clarify why I would decide this appeal in his favour.

A. Initial investigation and the trust report

[12] The LSS first began looking into Mr. Abrametz's financial records in 2012, as a result of irregularities relating to a lawyer with whom Mr. Abrametz had practiced and shared a trust account. In August 2012, John Allen C.A., an auditor employed by the LSS, asked Mr. Abrametz to provide detailed client trust ledgers from January 1, 2008, to June 30, 2012. On December 4, 2012, Mr. Abrametz – knowing Mr. Allen would attend at his office the next day to review financial records – faxed a letter to Mr. Allen [self-report] which reported that he had failed to promptly deposit $36,578.45 in fees from eight files into his office account, as required by the Rules adopted by the Benchers pursuant to s. 10 of the *LPA*. That self-report would change the focus of Mr. Allen's investigation.

[13] As scheduled, Mr. Allen and one of his staff attended between December 5–7, 2012, to review Mr. Abrametz's records. They asked for and received additional documents from Mr. Abrametz in mid-December. 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.

[14] To be clear, there was no suggestion at this stage or at any stage of the investigation or prosecution that Mr. Abrametz had misappropriated client funds.

[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.

[16] Mr. Allen's audit was far from complete when the undertaking was signed. He returned to Mr. Abrametz's office on August 27–28, 2013, to review further records. Mr. Allen deposed that he exchanged correspondence with Mr. Abrametz "throughout 2013". However, the only letters specifically identified in Mr. Allen's affidavit which sought to advance the investigation were sent in the fall of 2013. Those letters related to the allegations of tax avoidance referred to in the Notice of Intention to Interim Suspend.

[17] More specifically, Mr. Allen wrote to Mr. Abrametz on September 24, 2013, asking if, when and how he had reported the amounts referred to in the self-report as taxable income.

Mr. Abrametz questioned why he was asked to provide that information. In an October 8, 2013, letter, Mr. Allen advised Mr. Abrametz it was "relevant to the Law Society investigation of Mr. Abrametz, by his actions in having his clients endorse (trust) cheques back to him as payment for (legal services) rather than depositing these payments through his general account (refer Rule 942 (3)) made his clients party to a criminal offence – a criminal offence that is considered relevant to the Law Society investigation". In an October 9 letter to Mr. Abrametz's counsel, Mr. Allen reiterated "that Mr. Abrametz may have been using this scheme to evade payment of personal income tax". Mr. Allen also wrote to Mr. Abrametz's counsel on October 17 and November 12 to renew his request, finally advising he would forward the matter to the LSS Complaints Counsel if he did not get what he wanted. Mr. Abrametz did not comply. There is no evidence Mr. Allen then referred the matter to Complaints Counsel.

[18] Mr. Allen described his investigation of Mr. Abrametz's financial records as "considerable". He averred that he and a staff member "extensively reviewed client files, cancelled cheques or cheque images, bank reconciliations, client trust accounts and ledgers duplicate, deposit slips and other records and supporting documents". He attested that it was "exceptionally difficult" to examine Mr. Abrametz's file records "as his files could not be relied upon to reflect what had actually happened on the client matters". He said that, as a result, it was necessary to re-create transactions, and to review documents numerous times. He deposed that he reviewed in excess of 150 client files and at least 15,000 documents, spending in excess of 800 hours.

[19] There are, however, no particulars of when Mr. Allen spent this time, other than as noted above. There is no evidence of what he did in 2014, other than the bare fact that he completed his final trust report on October 30, 2014. The time records of Timothy Huber, the LSS disciplinary counsel who had conduct of this file, has only four entries totaling 2.2 hours between October 9, 2013, and October 29, 2014. Mr. Allen's trust report, which was primarily made up of attachments, was provided to Mr. Huber on October 30, 2014. Mr. Huber's time records show a two-hour entry for reviewing the trust report that day.

B. The tax evasion investigation and related applications and appeal

[20] The trust report resulted in the preparation of a second Notice of Intention to Interim Suspend by the CIC on November 10, 2014. That notice advised Mr. Abrametz that his interim suspension was being considered pending completion of the CIC investigation and report relating to the issues identified in the trust report. As in the case of the first notice, Mr. Abrametz was not suspended. The LSS agreed he could continue practicing on the conditions specified in his March 14, 2013, undertaking, with the addition of an alternate supervisor. Mr. Abrametz was still practicing on those conditions when this appeal was heard and was permitted to continue doing so by this Court despite the objections of the LSS. There was evidence Mr. Abrametz had not misconducted himself in any way in the approximately six years that had passed from the time the practice conditions were first imposed to the date this appeal was heard.

[21] Following the receipt of the trust report, the CIC decided to question Mr. Abrametz. That questioning took place on February 5, 2015. The LSS sent Mr. Abrametz follow-up questions on March 18. In a May 4 letter to the LSS, Mr. Abrametz's counsel confirmed that Mr. Abrametz took the position tax matters between him and the Canada Revenue Agency were not relevant and objected to the LSS request that he produce personal and corporate income tax returns.

[22] Mr. Huber then prepared a demand letter pursuant to s. 63 of the *LPA* requiring Meyers Norris Penny and Mr. Abrametz to provide documents relating to the alleged tax avoidance. Mr. Huber's time records disclose that he spent six hours on the s. 63 issue in May and June 2015. The demand letter was served on Mr. Abrametz on June 16, 2015. Mr. Huber deposed that, from mid-June to September, he worked on and finalized an Originating Application [s. 63 Application] and supporting affidavit from Donna Sigmeth, LSS Complaints Counsel. Mr. Huber's time records disclose that he spent 6 ½ hours on these documents over approximately 3 months.

[23] The s. 63 Application was served on September 9, 2015. It sought an order for the disclosure of files, information and documents relating to the personal income tax filings of Mr. Abrametz, any law firm where he had practiced law, and any corporations in which he had an ownership interest, together with all foundational documents, for the 2008–2012 tax years. The s. 63 Application explained that the purpose of the investigation was "to determine whether or not

[Mr. Abrametz] exploited his clients and his firm trust account as part of a scheme to evade payment of income tax on certain amounts".

[24] Ms. Sigmeth's affidavit confirms that the target of the application was Mr. Abrametz's practice of issuing trust cheques to clients and having them endorse those cheques to enable Mr. Abrametz to take payment of fees in cash outside of his accounting system. She deposed as follows:

> 4. … If Abrametz was indeed using his firm trust account and his clients in furtherance of an illegal scheme to avoid payment of tax, such conduct is within the purview of the Law Society and would constitute conduct unbecoming.

[25] In response, Mr. Abrametz asked to cross-examine Ms. Sigmeth. The LSS opposed that request. On October 13, 2015, Mr. Abrametz applied to the Court of Queen's Bench for an order to conduct the cross-examination. The LSS, faced with Mr. Abrametz's opposition, promptly opened a second front in its campaign to get the tax records, issuing subpoenas pursuant to s. 39 of the *LPA* to Mr. Abrametz's accountants on October 15 commanding them to produce the tax records on or before October 20. On October 28, Mr. Abrametz applied to the Court of Queen's Bench to quash those subpoenas. The LSS responded by issuing a subpoena to Mr. Abrametz. He then amended his application to quash to include all three subpoenas.

[26] The applications to quash the subpoenas and cross-examine Ms. Sigmeth were heard November 3, 2015, and decided by McMurtry J. in her April 21, 2016, decision in *Law Society of Saskatchewan v Abrametz*, 2016 SKQB 134 [subpoena decision]. Justice McMurtry dismissed the application to cross-examine. She granted the application to quash the subpoenas as an abuse of process, finding that the LSS improperly sought to discover documents through the use of a subpoena to avoid the judicial oversight which applies to a s. 63 application.

[27] Justice Schwann (as she then was) heard the s. 63 Application on June 23, 2016. Supplemental briefs were filed in July and August. Justice Schwann granted the application on September 29, 2016: see *Law Society of Saskatchewan v Abrametz*, 2016 SKQB 320. She concluded that the tax records were within the scope of s. 63 as they were required for the purposes of an investigation within the LSS's mandate. Mr. Abrametz had argued, among other things, that the investigation was *ultra vires* the LSS, as it was an attempt to determine whether he had

committed a criminal offence by contravening the *Income Tax Act*, RSC 1985, c 1 (5th Supp). Justice Schwann commented as follows in relation to that argument:

> [69] … the LSS has not lodged a complaint against the Member specifically alleging a breach of the *Income Tax Act*. As no disciplinary charges have been framed in relation to these new issues and the LSS is still in the investigative stages, assessing the "dominant purpose" behind the LSS investigation is premature. As the LSS correctly observes, the investigation could lead to any number of findings ranging from no wrong doing to a finding that further discipline allegations should be laid such as misleading the LSS, involving clients and the Member's trust account in an illegal scheme to conceal non-declared income, etc. In short, the investigation continues and the fruits of that investigation will unfold in due course.

[28] Mr. Abrametz served a Notice of Appeal of Schwann J.'s s. 63 order on October 8, 2016. Mr. Abrametz's counsel advised they would file the factum on that appeal in February 2017, but did not do so. The progress of the appeal was interrupted when Mr. Abrametz filed a conduct complaint against Mr. Huber on February 28, 2017. As a result, Mr. Huber stepped away from the file and the LSS retained Karen Prisciak, Q.C. to prosecute the charges, but not the appeal.

[29] Mr. Huber was notified on September 20, 2017, that the complaint against him had been dismissed. He then moved to advance the appeal, requesting that Mr. Abrametz file his factum. Mr. Abrametz requested several extensions and finally filed his factum on February 15, 2018. Mr. Huber deposed that he and counsel for Mr. Abrametz thereafter agreed the LSS need not rush to complete its factum due to the other activity on the file, as it was expected the appeal would not be heard before the fall of 2018. The LSS factum has now been filed, but the appeal has not yet been heard, having been adjourned pending the disposition of this appeal.

C. Bifurcation of the investigation and disciplinary proceedings

[30] The continuing attempt to obtain evidence of tax evasion was not the only avenue pursued by the LSS in 2015. As the CIC sought disclosure of the tax records, it also moved to prepare its report recommending that charges be brought against Mr. Abrametz. A March 12, 2015, entry in Mr. Huber's time records refers to an "early draft of CIC report" and the consideration of charge wording. A July 9, 2015, entry referred to the possibility of proceeding with some charges while the tax investigation continued:

> EE with CIC regarding the splitting of the matters and advancing that which was ready to prosecution

[31] The CIC chose that course. The CIC report, which was executed July 27, 2015, stated that it had determined that the trust report, with Mr. Abrametz's "opportunity to respond", provided sufficient information for the CIC to find reasonable and probable grounds to believe Mr. Abrametz was guilty of conduct unbecoming a lawyer, and to recommend the Chair of Discipline appoint a Hearing Committee to determine seven specified charges. It also said this:

> The Committee reserves the right to recommend additional charges should further and better disclosure from the Member be forthcoming, and where such disclosure supports additional charges.

[32] The Formal Complaint accusing Mr. Abrametz of conduct unbecoming a lawyer was signed 11 weeks later, on October 13, 2015. It repeated the seven charges specified in the CIC report, alleging that Mr. Abrametz (client names have been deleted):

> 1. did, in relation to the following clients, effect withdrawals of trust funds for the payment of fees, disbursements or other expenses in a manner contrary to Law Society of Saskatchewan Rule 942(3):
>
> …
>
> 2. did knowingly cause trust cheques to be issued to a fictitious person for the purposes of effecting a transfer of trust funds for payment to himself;
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> 3. did falsify the signature of a fictitious person as an endorsement on his firm trust cheque for the purposes of effecting a transfer of trust funds for payment to himself;
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> 4. did fail to maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Law Society of Saskatchewan Rules in relation to the following client matters:
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> …
>
> 5. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:
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> a. the transaction was a fair and reasonable one;
>
> b. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
>
> c. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
>
> d. the client consented in writing to the conflict of interest; and
>
> e. there was no appearance of undue influence;
>
> in relation to the following client matters:
>
> …
>
> 6. did breach the fiduciary duty he owed to the following clients by charging excessive fees and interest on loans and/or advances:

> …
>
> 7. did, contrary to the Law Society of Saskatchewan Rule 942(4), fail to pay money from his trust account expeditiously after a legal matter was concluded on the following matters:
>
> …

[33] All of these charges [referred to as charges 1–7], except the last, related directly or indirectly to the five issues first identified in the Notice of Intention to Interim Suspend which had been served on Mr. Abrametz in February 2013, 32 months before. None of the charges dealt with the tax issue.

D. The Adjournment Decision

[34] As a result of the LSS splitting the investigation and prosecution, in early 2016 Mr. Abrametz's counsel advised Mr. Huber that Mr. Abrametz would make preliminary motions to the Hearing Committee. On March 28, 2016, Mr. Abrametz applied to adjourn or stay the discipline hearing proceedings until CIC's investigation was complete. Mr. Huber opposed the motion because he thought it would result in inordinate delay.

[35] The motion was heard on May 2, 2016, and the resulting decision [Adjournment Decision] was issued August 20, 2016. The Hearing Committee found it did not have the authority to grant what it characterized as an indefinite adjournment (at para 20), as it had an obligation to hear the complaint pursuant to s. 48(2) of the *LPA* (now repealed):

> 48(2) A hearing committee shall:
>
> (a) hear the formal complaint with respect to which it is appointed; and
>
> (b) decide whether or not the complaint is well founded, notwithstanding that the existence, interpretation or construction of a contract or the determination of any other question of fact may be involved.

[36] The Hearing Committee also rejected the argument that failing to stay the disciplinary hearing proceedings while the tax evasion investigation continued would constitute a breach of fairness and the principles of natural justice. It reasoned that Mr. Abrametz had known the particulars of the seven charges since the Formal Complaint was served. It commented that Mr. Abrametz did not claim there was a lack of notice or disclosure relating to those charges, and noted that his self-report of December 4, 2012, was "a partial basis for the CIC investigation and the Formal Complaint". It summarized its conclusions relating to this issue as follows:

> 27. The Member is … 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.

[37] Mr. Abrametz also argued that charges 1–4 were factually and legally intertwined with the continuing investigation and, for that reason, he would face bifurcated proceedings if CIC ultimately recommended further charges. He submitted that the proceedings relating to the October 13, 2015, complaint should be stayed or adjourned for that reason as well. The Hearing Committee acknowledged that future charges relating to income tax reporting may relate to the same transactions and clients as charges 1–4. However, it found that bifurcation could not arise, as CIC might choose not to investigate or lay further charges. It also concluded the conduct enumerated in the Formal Complaint was not inextricably linked to the continued investigation of the tax issues. It did not explain how it reached that conclusion despite CIC's admissions relating to the relationship between the investigation and current charges.

[38] Mr. Abrametz further submitted that he would be denied the benefit of the totality principle in sentencing if he was convicted of further charges which had not yet been laid. The Hearing Committee acknowledged, citing *Lambert v College of Physicians and Surgeons of Saskatchewan* (1991), 89 Sask R 203 (QB), and *Matheson v College of Physicians and Surgeons of Prince Edward Island*, 2010 PECA 5, 295 Nfld & PEIR 56, that it is common to increase penalties for subsequent offences. However, it found this argument was premature, concluding that it would only be appropriate for Mr. Abrametz to raise this after he had been found guilty on both the current and new charges. It rejected Mr. Abrametz's argument that he would be prejudiced in respect of costs on the same basis.

[39] Finally, the Hearing Committee emphasized that the public and the profession have an interest in the timely resolution of complaints and charges of conduct unbecoming. It concluded there was no evidence there would be additional disclosure, that the CIC investigation would be completed, or that the CIC would recommend additional charges. It finally commented as follows:

> 44. It is insincere for the Member to suggest 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.

E. The disciplinary hearing and Conduct Decision

[40] After receiving the Adjournment Decision in August 2016, Mr. Abrametz requested further disclosure from the LSS. Some additional disclosure was provided in October. The remainder was offered on December 5, 2016, through an invitation for counsel for Mr. Abrametz to attend at the LSS offices. Mr. Abrametz's counsel advised that Mr. Abrametz would attend when he returned to Canada in April.

[41] There was a case management call between the Hearing Committee and counsel on November 21, 2016. Mr. Huber advised that Mr. Allen, who would be the only witness called by the LSS, would be absent from January to April 2017. Mr. Allen deposed that he took a three-month holiday in 2017. The parties finally agreed in February that the disciplinary hearing would be held May 17–19, 2017. Ms. Prisciak prepared for and conducted the hearing. Her accounts disclose entries totaling approximately 172 hours from her initial contact with the LSS on March 9, 2017, to the conclusion of the hearing and post-hearing correspondence.

[42] The hearing commenced as scheduled on May 17–19, 2017, and was continued on August 9–10 and September 29. Mr. Allen, Mr. Abrametz and Mr. Abrametz's spouse, Brenda Abrametz, who was the part-time manager of his office, were the only witnesses.

[43] The Conduct Decision was rendered January 10, 2018. The Hearing Committee found that Mr. Abrametz had, on the eight occasions between 2008 and 2010 identified in his self-report, effected withdrawals of trust funds to pay fees, disbursements or other expenses, other than by cheques payable to the member's general account as required by Rule 942(3). In seven of those cases, Mr. Abrametz issued cheques to clients that were then endorsed by the clients and cashed by Mr. Abrametz. In one case, he had issued three cheques to a fictitious person, endorsed that fictitious name on the cheques, and cashed them. Mr. Abrametz acknowledged that, in each of these eight instances, he did not deposit the funds into his law office account until late November 2012, long after the transactions had occurred.

[44] These transactions were the basis for the Hearing Committee's conclusion that Mr. Abrametz was guilty of charge 1, being the breach of Rule 942(3). They were also the basis for their conclusion he was guilty of charge 2, the issuance of trust cheques to a fictitious person

– being his own pseudonym – for the purpose of effecting a transfer of trust funds to pay himself. The Hearing Committee concluded charge 3 was not made out, as it is not possible to falsify the signature of a person that does not exist. It found that charge 3 was a duplication of the conduct complained of in charge 2.

[45] The Hearing Committee also found the records relating to those eight transactions made out charge 4. It found there were multiple, conflicting and misleading statements of adjustments, correcting invoices and accounts generated only days before Mr. Allen's December 5, 2012, on-site visit, and ledgers and cheques that did not reflect the fact that payments had been for the benefit of Mr. Abrametz. Mr. Abrametz argued that charge 1 and charge 4 were duplicative, as charge 4 related to the generation of records calculated to avoid detection for the very payments that were the subject of charge 1. The Hearing Committee disagreed.

[46] As to charge 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.

[47] Chapter VI of the *Code* related to conflicts of interest between the lawyer and client. The relevant provision of the *Code* is Chapter VI(d), which provided as follows:

> The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:
>
> (i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;
>
> (ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;
>
> (iii) the client consents in writing to the transaction; and
>
> (iv) there is no appearance of undue influence.

[48] The Commentary to this provision of the *Code* said this about debtor-creditor relationships:

> Debtor-Creditor Relationship to be Avoided
>
> 4. The lawyer should avoid entering into a debtor-creditor relationship with the client. The lawyer should not borrow money from a client who is not in the business of lending money. It is undesirable that the lawyer lend money to the client except by way of advancing necessary expenses in a legal matter that the lawyer is handling for the client.

[49] The Hearing Committee found that the advances constituted loans which resulted in a debtor-creditor relationship and that "[i]t is the debtor/creditor relationship … that the *Code* is intended to curtail" (at para 218). It concluded that meant the charge was made out, reasoning as follows:

> 221. This Hearing Committee finds that, while not all business transactions are necessarily debtor/credit relationships, all debtor/creditor relationships are business transactions prohibited by the Code. Such relationships create and convey a pecuniary interest that inherently places the interests of the clients in conflict with those of the Member.
>
> (Emphasis added)

[50] The Hearing Committee then dealt with the four requirements imposed by Chapter VI(d). It found that the 30% fee charged on every loan made was neither fair nor reasonable. It concluded there were instances in which the terms of the loans were not disclosed to the client in writing, nor consented to in writing by the client as required by the *Code*. It held there was an appearance of undue influence, noting that Mr. Abrametz was the last resort for many clients to obtain money while awaiting the receipt of insurance benefits to replace lost earnings, and that some of his clients were vulnerable, had no bank account, were homeless or faced literacy challenges.

F. The Stay Decision

[51] The Chair of the Hearing Committee attempted to schedule the penalty hearing for February 2018 but was unable to do so as a result of the conflicting schedules of Mr. Abrametz, his counsel and LSS counsel. On March 22, 2018, the penalty hearing was set for June 5–6. On April 4, 2018, the penalty hearing was re-scheduled for August 3 to accommodate Mr. Abrametz's schedule.

[52] On July 5, 2018, Mr. Abrametz's counsel advised that Mr. Abrametz would apply to dismiss the prosecution for delay. That application, which would result in an adjournment of the penalty hearing to September 18, 2018, was served July 13, 2018 [Stay Application]. It sought a

permanent stay of the proceedings originating with the February 5, 2013, Notice of Intention to Interim Suspend, the trust report, and the Formal Complaint, based on three grounds:

1. delay arising out of the operation of s. 11(b) of the *Canadian Charter of Rights and Freedoms* [*Charter*];

2. loss of jurisdiction by operation of s. 53(1) of the *LPA*; and

3. delay constituting a breach of natural justice and procedural fairness resulting in an abuse of process.

[53] In his affidavit in support of the Stay Application, Mr. Abrametz deposed that he had been the subject of adverse publicity as a result of these proceedings, including prior to the January 10, 2018, Conduct Decision. His affidavit appended three media reports: a September 29, 2017, article posted on the website of the Missinipi Broadcasting Corporation which described the charges against and potential penalties facing Mr. Abrametz; a lengthy article published January 24, 2018, in the Prince Albert Daily Herald relating to the investigation and disciplinary proceedings; and a January 25, 2018, article published in paNOW.

[54] Mr. Abrametz also averred that the stress caused by the lapse of time had affected his health, resulting in monitoring for high blood pressure. He deposed that the delay had affected him "personally as a practitioner" and had affected his family by causing stress in his home and for his staff, who were concerned as to the viability of his practice for a period of five years.

[55] The Stay Application was heard on September 18, 2018, and the Stay Decision issued November 9, 2018. The Hearing Committee found it had not lost jurisdiction by failing to render its decision as soon as possible, as required by s. 53(1) of the *LPA* (now repealed). It also found that neither s. 7 nor s. 11(b) of the *Charter* applied. Mr. Abrametz has not appealed either of those conclusions and I need not deal with them further.

[56] On this appeal, Mr. Abrametz's position as to the Stay Decision is that the Hearing Committee erred in finding that delay did not result in a breach of fairness or natural justice so as to result in an abuse of process. The Stay Decision dealt with this issue, correctly identifying *Blencoe* as "[t]he leading case in this area of administrative law" (at para 48). It commented

(at para 50) that an applicant is not entitled to a stay of proceedings for the mere passage of time and said there are three distinct forms of prejudice that might amount to an abuse of process: prejudice to the fairness of the hearing; personal prejudice, such as psychological harm or damage to a person's reputation, such that the process for the regulation of lawyers would be brought into disrepute; and inordinate or unacceptable delay so significant that to continue the proceedings would cause damage to the public's interest and sense of fairness that would outweigh the potential damage to the public interest should the proceedings be halted.

[57] The Hearing Committee found that none of these forms of prejudice had been made out. It noted media attention was limited and late in the process. It concluded that the practice conditions were not overly restrictive, were consistent with the LSS mandate of protecting the public given Mr. Abrametz's conduct, and that there was no evidence of an unreasonable impact on Mr. Abrametz's practice. As to unacceptable or inordinate delay, the Hearing Committee cited the following statement by Bastarache J. in *Blencoe*:

> 122 The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. …

[58] The Hearing Committee characterized the allegations, number of files, and lengths to which Mr. Abrametz had gone to conceal his conduct as extensive and complex. It concluded he initially cooperated with the investigation but stopped doing so in May 2015. It found (at para 66) a significant part of the delay from the initiation of the investigation to the conclusion of the discipline hearing was attributable to Mr. Abrametz. The Hearing Committee did not clearly or completely identify the extent to which the delay was attributable to either the CIC or Mr. Abrametz. However, they (at para 67) did accept the CIC submission that 14 ½ months of what it had concluded was the delay at issue – a 66-month period from the commencement of the investigation to the issuance of the Conduct Decision – was attributable to the unavailability of Mr. Abrametz or his counsel for "certain steps". In addition, the Hearing Committee attributed the five-month period from Mr. Abrametz's March 28, 2016, application for a stay pending the completion of the tax investigation and the August 22, 2016, Adjournment Decision which dismissed that application to him. It is not clear whether they treated the overlapping three-month period from the June 23, 2016, hearing to the September 29, 2016, decision in the LSS s. 63 records application as neutral, or attributable to Mr. Abrametz.

[59] The Hearing Committee referred, by way of comparison, to the decision of this Court in *Merchant v Law Society of Saskatchewan*, 2014 SKCA 56, [2014] 6 WWR 643 [*Merchant 2014*], where Mr. Merchant took issue with an 81-month delay between the receipt of a complaint and the hearing of charges arising from that complaint. In that case, the Hearing Committee had concluded that there was no proven substantial prejudice to Mr. Merchant's defence and that the cause of the delay was not attributable solely or in the main to the LSS. The Court found, based on the facts before it, that was a reasonable conclusion by the Hearing Committee and that it was reasonable not to stay the proceedings. As I will explain, the Hearing Committee overlooked important factual differences between the circumstances of this case and those in *Merchant 2014*.

[60] In the result, the Hearing Committee in this case concluded as follows:

> 71. The approximately 66 months that elapsed between commencement of the investigation and the decision having been rendered was neither inordinate nor was it unacceptable given the complexity of the case, the size of the investigation and the delay that can be attributable directly to the Member's conduct. The importance of the LSS's primary mandate of public protection overshadows the specific delay, state caused or otherwise, in this matter. Any prejudice that the Member may have experienced as a result of the delay is not so significant that continuation of the process would taint these proceedings or be so unfair to the member that the public's sense of fairness would be harmed.

G. The Penalty Decision

[61] The Hearing Committee heard both the Stay Application and sentencing submissions on September 18, 2018. 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):

i) Sentencing ranges for similar offences;

ii) The member's disciplinary history;

iii) Admissions of guilt;

iv) Applicable mitigating factors;

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;

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.

[62] The Hearing Committee noted that Mr. Abrametz and 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.

[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).

[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 2010 SKCA 120, 362 Sask R 86; *Law Society of Upper Canada v Dyer*, 2004 CanLII 50938 (Ont LST); *Law Society of Saskatchewan v Tilling*, 2015 SKLSS 1; *Law Society of Saskatchewan v Duncan-Bonneau*, 2015 SKLSS 6 [*Duncan-Bonneau*]; and *Law Society of Upper Canada v Aguirre*, 2009 ONSHP 23 [*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.

III. GROUNDS OF APPEAL

[69] As is noted above, Mr. Abrametz identified five grounds of appeal, relating to four decisions made by the Hearing Committee:

1. The Hearing Committee's August 20, 2016, decision dismissing Mr. Abrametz's application pursuant to s. 48 of the *LPA* for an adjournment of the proceedings pending completion of the investigation by the CIC breached his right to a fair hearing.

2. The Hearing Committee's decision to convict Mr. Abrametz for failing to maintain proper books and records for eight client matters was unreasonable.

3. The Hearing Committee's decision to convict Mr. Abrametz of entering into debtor-creditor relationships with 11 clients when there was a conflict of interest and of failing to meet his obligations pursuant to the *Code* relating to those transactions was unreasonable.

4. The Hearing Committee erred in its November 9, 2018, Stay Decision by dismissing Mr. Abrametz's application to stay the proceedings as a result of undue delay constituting an abuse of process or a breach of natural justice.

5. The Hearing Committee erred in principle in sentencing Mr. Abrametz and imposed an unreasonable sentence.

[70] I have concluded that the appeal should be allowed based on the fourth of these grounds. I will also deal with the second and third grounds, which challenge Mr. Abrametz's convictions for two of the seven offences with which he was charged, as they are relevant to the fourth ground. I do not find it necessary to deal separately with the Adjournment Decision, or the Penalty Decision.

IV. STANDARD OF REVIEW

A. Questions of law, fact, and mixed fact and law

[71] This is an appeal pursuant to s. 56(1) of the *LPA*:

> 56(1) If a formal complaint against a member is determined by the hearing committee to be well founded:
>
> > (a) the member may appeal the decision of the hearing committee or a penalty assessed or requirement imposed by the hearing committee resulting from the decision to the Court of Appeal within 30 days after the day of the decision or the assessment of a penalty or imposition of a requirement, whichever is later, by:
> >
> > (i) filing a notice of appeal with the registrar of the Court of Appeal; and
> >
> > (ii) serving a copy of the notice of appeal on the executive director[.]

[72] The standard of review that has been applied by this Court to appeals pursuant to this section is reasonableness, unless the question fell into one of the few categories to which the correctness standard still applied, such as issues of procedural fairness and questions of law of central importance to the legal system as a whole: *Kapoor v The Law Society of Saskatchewan*, 2019 SKCA 85 at para 18, 438 DLR (4th) 672; *Peet v Law Society of Saskatchewan*, 2019 SKCA 49 at para 16, [2019] 12 WWR 590; *Merchant 2014* at paras 38–41. See also *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 43, [2018] 1 SCR 772.

[73] However, that standard no longer applies. In its landmark decision in *Vavilov* and its companion cases (see *Bell Canada v Canada (Attorney General)*, 2019 SCC 66, 441 DLR (4th) 155 [*Bell Canada*], and *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67, 441 DLR (4th) 269), the Supreme Court of Canada reset the administrative law table, undertaking "a recalibration of the governing approach to the choice of standard of review analysis and a clarification of the proper application of the reasonableness standard" (at para 143). One important result of that recalibration was the majority's conclusion 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).

[74] The appellate standards are those specified in *Housen v Nikolaisen*, 2002 SCC 33 at para 37, [2002] 2 SCR 235. Questions of statutory interpretation and other questions of law – including as to the scope of the decision-maker's authority – are reviewed on the correctness standard.

Where, as here, the right of appeal extends to questions of fact, the standard of review relating to those questions is palpable and overriding error. Absent an extricable error of law, that deferential standard applies to mixed questions of fact and law. It also applies to discretionary decisions, in which an appellate court will intervene only 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: *Saskatchewan Crop Insurance Corporation v McVeigh*, 2018 SKCA 76 at para 26, 428 DLR (4th) 122.

[75] The direction in *Vavilov* is unambiguous. If the legislature specifies the standard of review, the court must abide by that direction. However, the contextual approach to the search for a standard of review set by the legislature, which had appeared to be mortally wounded for some time, has been laid to rest. Similarly, the relative expertise of an administrative decision-maker such as the LSS is no longer relevant in determining the standard of review. The presence of a statutory appeal mechanism, in and of itself, signals that the legislature intended to subject the decision-maker to appellate oversight and the application of the appellate standard (see generally paras 36–54).

[76] As to existing case law relating to the standard of review on a statutory appeal, the *Vavilov* majority 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). *Bell Canada* demonstrates that approach, applying a correctness standard to an issue relating to the interpretation of the CRTC's home statute which had previously been subject to the reasonableness standard.

[77] The second and third of Mr. Abrametz's grounds of appeal listed above challenged his conviction on two of the four counts on the basis that they were unreasonable. In part, those grounds relate to alleged errors of fact and of mixed fact and law, which are now reviewable on the palpable and overriding error standard. However, Mr. Abrametz also said that the Hearing Committee erred in finding that Chapter VI of the *Code*, which prohibited a lawyer from entering a "business transaction", prohibited Mr. Abrametz from advancing funds to his clients, as it prohibited all debtor-creditor relationships. He argued an "advance" is not a "loan" and thus does not create a debtor-creditor relationship within the meaning of the *Code*. Further, he submitted that

cancelled cheques and statements of adjustments are not books and records within the meaning of the relevant Rules. These alleged errors raise extricable questions relating to the interpretation of the Rules, including the *Code*, and, in turn, the issue of whether such questions are extricable questions of law.

[78] The answer to these questions calls for consideration of the statutory basis for and the nature of the Rules and *Code*. The benchers are obliged by s. 3.1 of the *LPA* "to regulate the profession and to govern the members in accordance with this Act and the rules". The benchers are authorized by s. 10 of the *LPA* to enact such rules for the regulating of lawyers, including prescribing a code of professional conduct (s. 10(c)) and requiring members to keep books, records and accounts (s. 10(s)). The Rules and *Code* are general rules that bind both members and visiting lawyers, enacted by the benchers pursuant to that delegated authority. The Rules and *Code* that applied to the charges against Mr. Abrametz were defined as regulations by s. 2 of *The Interpretation Act, 1995*, SS 1995, c I-11.2, which was in force at the time of the alleged offences. They were required to be filed with the Director of Corporations within 30 days (*LPA*, s. 88).

[79] These characteristics support the conclusion that the Rules and *Code* are delegated regulatory legislation, rather than internal administrative rules or policies.

[80] Further, rules promulgated by law societies have been treated as "law" for *Charter* purposes. In *Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 SCR 295, Deschamps J. discussed the concept of "prescribed by law" in s. 1 of the *Charter* and confirmed that law society rules constitute "law" for this purpose if they have certain characteristics:

> [53] The Court has also implicitly recognized other forms of limits that were not originally identified in *Therens* as being prescribed by law, including limits contained in municipal by-laws (*Ramsden* and *City of Montréal*), provisions of a collective agreement involving a government entity (*Lavigne*) and rules of a regulatory body (*Black v. Law Society (Alberta)*, [1989] 1 S.C.R. 591). Such limits satisfy the "prescribed by law" requirement because, much like those resulting from regulations and other delegated legislation, their adoption is authorized by statute, they are binding rules of general application, and they are sufficiently accessible and precise to those to whom they apply. …

The provisions of the Rules and *Code* at issue in this case have all of these characteristics.

[81] The interpretation of law society rules has also been treated as a question of law by courts in Saskatchewan and other provinces. In *Merchant v Law Society of Saskatchewan*, 2002 SKCA 60 at paras 54–55, 213 DLR (4th) 457, this Court held that the interpretation and application of the Rules relating to marketing raised questions of law and mixed fact and law. In *Churko v The Law Society of Saskatchewan*, 2011 SKQB 327 at para 14, 388 Sask R 22, Ball J. adopted the modern rule of statutory interpretation to interpret the Rule at issue in that case. Justice Deschenes spoke to this issue in *O'Toole v Law Society of New Brunswick*, 2007 NBCA 14, 312 NBR (2d) 258:

> [20] The question of how the appellant conducted himself, and whether his conduct offends the Rules of Professional Conduct adopted by the Law Society of New Brunswick, involve factual findings and an interpretation of the Law Society's *Code of Professional Conduct*. In my view, such questions involve questions of mixed law and fact, as they require the application of specific rules of conduct to a particular set of circumstances. …

[82] Similarly, in *Law Society of Upper Canada v Kulidjian*, 2017 ONLSTA 24 at para 17, the Law Society Tribunal Appeal Division found that the proper interpretation of the Law Society's rules of professional conduct constituted a question of law.

[83] I would finally note that the interpretation of bylaws and rules made by other statutory delegates has been treated as a question of law. Municipal bylaws are a common example. As Vancise J.A., in dissent, said in *R v Farmer's Fruit Store Ltd.* (1984), 37 Sask R 241 (CA) at para 26, "[t]he proper construction of the municipal bylaw is a question of law in the same way as the proper construction of a statute". Interestingly, Wagner J. (as he then was) explained the similarity between municipal bylaws and law society rules in *Green v Law Society of Manitoba*, 2017 SCC 20, [2017] 1 SCR 360:

> [21] Rules made by law societies are akin to bylaws passed by municipal councils. McLachlin C.J. explained the rationale for this standard of review in *Catalyst Paper*:
>
> > ... review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations. [para. 19]
>
> [22] Similar considerations are relevant in the context of rules made by a law society. In the case at bar, the legislature specifically gave the Law Society a broad discretion to regulate the legal profession on the basis of a number of policy considerations related to the public interest. The Act empowers the benchers of the Law Society to make rules of

> general application to the profession, and in doing so, the benchers act in a legislative capacity.

[84] In *College of Physicians and Surgeons of Saskatchewan v Shamsuzzaman*, 2011 SKCA 41, 371 Sask R 84, Jackson J.A. commented that in interpreting the regulatory bylaws promulgated by the College – which were also regulations within the meaning of *The Interpretation Act, 1995* required to be filed with the Director of Corporations – the Discipline Committee of the College "was interpreting a legislative instrument" (at para 28). Similarly, Smith J. (as she then was) noted that the interpretation of the bylaws is a question of law in *Huerto v College of Physicians and Surgeons of Saskatchewan*, 2004 SKQB 360 at para 23, 253 Sask R 1.

[85] For these reasons, the questions relating to the Hearing Committee's interpretation of the Rules and *Code* identified by Mr. Abrametz in relation to the second and third grounds of appeal are extricable questions of law and, as such, are subject to a review on a correctness standard.

B. Standard of review: abuse of process

[86] The fourth ground of appeal asks whether there has been inordinate delay amounting to an abuse of process which calls for a stay. In *Vavilov*, the Court did not directly address the standard of review relating to this issue in the context of a statutory appeal. There are, however, helpful lines of authority.

[87] First, there is authority that a challenge to an administrative decision based on a breach of the duty of fairness raises a question of law. In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*], the Federal Court of Appeal dealt with a statutory appeal based on an alleged breach of procedural fairness pursuant to s. 41 of the *Canada Transportation Act*, SC 1996, c 10, which authorized appeals on a question of law or jurisdiction. In his comprehensive and thoughtful analysis of the standard of review, Rennie J.A. confirmed the application of the correctness standard to procedural fairness issues, commenting as follows:

> [46] Procedural fairness has been described as "a cornerstone of modern Canadian administrative law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 79, [2008] 1 S.C.R. 190 (*Dunsmuir*)) and whether that duty has been fulfilled has, for decades, been treated as a legal question for the Court to answer (*Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671 (*Nicholson*); *Knight* at 682; *Baker* at 837–841; *Mavi* at para. 42). Deference is but one criterion amongst many that informs the *content* of fairness, but it is irrelevant in answering

> the question as to *whether* fairness has been met. *Dunsmuir* itself is an authority for the point.
>
> (Emphasis in original)

[88] I note also, by way of example, *Nova Scotia (Attorney General) v MacLean*, 2017 NSCA 24, 21 Admin LR (6th) 238, where the Court dealt with a statutory appeal provision which authorized an appeal on a question of law from the decision of a human rights board of inquiry. Justice Saunders dealt with jurisdiction and standard of review as follows:

> [20] A reasonable apprehension of bias is an issue of procedural fairness and, where found, results in a loss of jurisdiction. Therefore, the complaint that such an appearance of partiality exists, is seen to raise a question of law. Accordingly, our review for bias (whether apparent or actual) is carried out on a correctness standard. No deference is paid to the decision-maker's ruling.

[89] Second, it is my view that an allegation of delay constituting an abuse of process is an allegation of a breach of procedural fairness even where "hearing fairness" – in the sense of your ability to respond to the case against you – has not been compromised and, for that reason, raises a question of law. That characterization of delay constituting an abuse of process accords with the balancing of interests at the heart of the *Blencoe* test. This balancing requires the court to consider whether "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (at para 120). Similarly, as Bastarache J. said when discussing unreasonable delay in the context of abuse of process:

> 121 To constitute a breach of the duty of fairness, the delay must have been unreasonable or inordinate (Brown and Evans, [*Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, 1998)] at p. 9-68). …

[90] Justice LeBel made essentially the same point in *Behn v Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 SCR 227, in relation to abuse of process generally:

> [41] As can be seen from the case law, the administration of justice and fairness are at the heart of the doctrine of abuse of process. In *Canam Enterprises* and in *C.U.P.E.*, the doctrine was used to preclude relitigation of an issue in circumstances in which the requirements for issue estoppel were not met. But it is not limited to preventing relitigation. For example, in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, the Court held that an unreasonable delay that causes serious prejudice could amount to an abuse of process: paras. 101-21. The doctrine of abuse of process is flexible, and it exists to ensure that the administration of justice is not brought into disrepute.

[91] There is also more direct authority for the proposition that inordinate delay is an issue of procedural fairness. In *Financial and Consumer Services Commission v Emond*, 2017 NBCA 28, 414 DLR (4th) 654 [*Emond*], where the respondent alleged there had been delay constituting an abuse of process, the Court dealt with the standard of review as follows:

> [13] The second ground of appeal deals with the issue of delay, and whether Mr. Drapeau and Mr. Emond's rights to a speedy hearing were violated. It is generally accepted that the standard of review of correctness applies to matters of procedural fairness (see *Amalgamated Transit Union Local 1182 v. The City of Saint John et al.*, 2006 NBCA 70, 301 N.B.R. (2d) 1, per Robertson J.A., at para. 74; *New Brunswick Human Rights Commission v. Province of New Brunswick (Department of Social Development)*, 2010 NBCA 40, 360 N.B.R. (2d) 283, per Robertson J.A., at para. 32; *O'Connell, as the Registrar of Motor Vehicles for the Province of New Brunswick v. Maxwell*, 2016 NBCA 37, [2016] N.B.J. No 157 (QL), per Quigg J.A.; and *Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Education v. Kennedy et al.*, 2015 NBCA 58, [2015] N.B.J. No 251 (QL), per Drapeau C.J.N.B.). Thus, I conclude the second ground of appeal attracts the correctness standard.

[92] In *Robertson v British Columbia (Teachers Act, Commissioner)*, 2014 BCCA 331, 376 DLR (4th) 1 [*Robertson*], the Court reached a conclusion which was the same in substance as that in *Emond*. The Chambers judge had found that the common law correctness standard applied. The Court of Appeal held that was an error, as the standard of review relating to delay was fixed by British Columbia's *Administrative Tribunals Act*, SBC 2004, c 45 [*ATA*]. However, Garson J.A. then found as follows:

> [56] … it is my opinion that the overarching question at issue is one of natural justice and procedural fairness. Section 58(2)(b) would therefore apply and the proper inquiry for the reviewing court is whether the panel acted fairly in all the circumstances. I rely primarily on *Blencoe*, the governing authority on delay in the administrative context, to support my conclusion that abuse of process by delay is a question of natural justice and must therefore be evaluated on the standard set out in s. 58(2)(b).
>
> …
>
> [62] … A discretionary decision is generally one requiring the application of judgment in choosing among a range of acceptable alternatives. Here the real question to be decided is whether the delay constituted an abuse of process. This question requires a correct response. Whether to accede to an interlocutory application to quash a citation may on its face appear to seek a discretionary remedy but the core question to be determined is one that must be answered correctly, not one that is a choice between a range of acceptable outcomes. This leads me to the conclusion that ss. (a) could not be the right standard of review. It is overly deferential and would not accord with *Blencoe*.

[93] For that reason, the Court found the applicable standard under the *ATA* was that applicable to procedural fairness, which, as Garson J.A. noted, "does not differ markedly from the application of a correctness standard. In both instances, the authorities suggest that no deference is owed and

that the task of the reviewing court is to assess whether the impugned decision-maker correctly applied the principles of natural justice and procedural fairness" (at para 66). She also commented as follows:

> [68] I am not convinced that determining whether Mr. Robertson experienced prejudice due to delay is a true finding of fact given its central importance to the test for abuse of process in this context. While I would agree that a true finding of fact would attract the deferential standard of review of patent unreasonableness found in s. 58(2)(a), it does not seem like the questions here at issue are such questions.

[94] Other examples of decisions that have applied a correctness standard to this question include *Moodie v Canada (Attorney General)*, 2015 FCA 87 at paras 50–51, 472 NR 158 [*Moodie*], which characterized the issue as one of procedural fairness; and *Camara v Canada*, 2015 FCA 43, 468 NR 155 [*Camara*]. *Volochay v College of Massage Therapists*, 2019 ONSC 5718 [*Volochay*], also found that this issue is one of procedural fairness and, for that reason, that no standard of review applies. Despite the reasoning in *Moodie* and *Camara*, the Court also adopted the "no standard of review" approach in *R.G. v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 297 at para 22 [*R.G.*].

[95] Other courts have taken a different path. In *Merchant 2014*, this Court applied the reasonableness standard (at para 97). In *Peet v Law Society of Saskatchewan*, 2014 SKCA 109, [2015] 2 WWR 466 [*Peet 2014*], which was decided five months later, the Court agreed to apply the reasonableness standard as proposed by the parties. However, Richards C.J.S. did not confirm that was the correct standard, commenting that he "would not want to be taken to have foreclosed an argument … to the effect that the correctness standard of review applies in relation to constitutional and administrative law questions of the sort advanced in connection with the delay issue" (at para 39). He noted that, in that case, the result would be the same regardless of which standard of review was adopted. The Court was not asked in *Peet 2014* or *Merchant 2014* to decide whether delay amounting to an abuse of process is a matter of procedural fairness.

[96] In *Law Society of Upper Canada v Abbott*, 2017 ONCA 525, 414 DLR (4th) 545 [*Abbott*], where the issue was whether the delay in that case should result in a reduction in sentence rather than a stay, the Court applied the reasonableness standard, characterizing the issue as the standard of review relating to sentencing rather than to abuse of process. In *Davison*, the Court applied a reasonableness standard, including as to the administrative tribunal's conclusions as to prejudice.

[97] In my view, the approach adopted in *Emond*, *Robertson*, *Volochay*, *Moodie*, *R.G.* and *Camara* is correct in principle. The overarching issue in deciding whether delay amounts to an abuse of process is one of procedural fairness, regardless of whether hearing fairness has been compromised. That is so regardless of what delays are at issue, which turns on the facts. Delays may occur at any stage of the process, and thus may be investigatory, procedural or both.

[98] As between the competing formulations of the standard of review relating to procedural fairness, this Court – while acknowledging that the usual standards of review are a somewhat uneasy fit where a breach of the duty of fairness is at issue – has followed the direction in *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, affirming that the standard of review is correctness: see *Mercredi v Saskatoon Provincial Correctional Centre*, 2019 SKCA 86 at para 26; *Risseeuw v Saskatchewan College of Psychologists*, 2019 SKCA 9 at paras 63–64, [2019] 2 WWR 452; *Eagle's Nest Youth Ranch Inc. v Corman Park (Rural Municipality)*, 2016 SKCA 20, 395 DLR (4th) 24; *Saskatoon (City) v Amalgamated Transit Union, Local 615*, 2017 SKCA 96, [2018] 4 WWR 882.

[99] In substance, this means that the reviewing court decides for itself whether the process was procedurally fair. No deference is accorded. I note the comprehensive and useful discussion of the meaning of correctness in the context of procedural fairness in *CPR* (at paras 35–56). Justice Rennie summarized the Court's task as follows:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at para. 21) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

[100] Here, the application of the correctness standard to the fourth ground of appeal – the challenge to the Stay Decision – calls for the Court to decide if the Hearing Committee both adopted the correct legal test and correctly applied that standard to the facts it found. We must determine whether delay occurred which constituted an abuse of process. The palpable and overriding error standard applies to the underlying findings of fact. However, I agree with Garson J.A. in *Robertson* that while findings as to the impact of delay on Mr. Abrametz – such as

an impact on his practice, professional reputation or health – are findings of fact, the question of whether those facts have resulted in prejudice of the sort necessary to demonstrate an abuse of process is reviewable on a correctness standard, as in the case of a decision as to whether the right to a fair hearing has been compromised for other reasons. That follows from the fact that the reviewing court undertakes the analysis anew. The same is true of the question of whether the facts disclose an inordinate delay.

[101] I would finally note that abuse of process has been characterized as a question of law of fundamental importance to the administration of justice in the context of the standard of review analysis pursuant to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], although not in the context of delay in an administrative proceeding. In *Dunsmuir*, Bastarache and LeBel JJ. summarized the issue this way:

> [60] As mentioned earlier, courts must also continue to substitute their own view of the correct answer where the question at issue is one of general law "that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" (*Toronto (City) v. C.U.P.E.*, at para. 62, *per* LeBel J.). Because of their impact on the administration of justice as a whole, such questions require uniform and consistent answers. Such was the case in *Toronto (City) v. C.U.P.E.*, which dealt with complex common law rules and conflicting jurisprudence on the doctrines of *res judicata* and abuse of process — issues that are at the heart of the administration of justice (see para. 15, *per* Arbour J.).

[102] In *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 SCR 77, the issue was whether the decision-maker had correctly decided whether CUPE could relitigate the issue decided against a grievor in criminal proceedings. Justice Arbour concluded as follows in relation to the doctrines of *res judicata* and abuse of process:

> 15 … These rules and principles call for a judicial balance between finality, fairness, efficiency and authority of judicial decisions. The application of these rules, doctrines and principles is clearly outside the sphere of expertise of a labour arbitrator who may be called to have recourse to them. In such a case, he or she must correctly answer the question of law raised. …

[103] She also explained that the key interest protected by the doctrine of abuse of process is fairness:

> 35 Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007:

> … abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.

See also *McPherson v Campbell*, 2019 NSCA 23 at para 18.

[104] In *Wachtler v College of Physicians and Surgeons (Alberta)*, 2009 ABCA 130, [2009] 8 WWR 657 [*Wachtler*], the Court also found that an allegation of a breach of fairness resulting from delay raised a question of general law within the meaning of *Dunsmuir* and applied a correctness standard (at para 13).

[105] In the result, it is my view that the question as to whether there has been delay constituting an abuse of process is a question of law, whether in and of itself as a question of central importance to the legal system or because it is a matter of procedural fairness, regardless of whether the ability to respond to the case against you has been compromised. As such, it is reviewable on the basis of correctness.

V. ANALYSIS

A. Did the Hearing Committee err by convicting Mr. Abrametz of failing to maintain proper books and records?

[106] Turning now to the merits, the Hearing Committee found Mr. Abrametz had breached Part 13(H) of the Rules by failing to maintain proper records in relation to six of the eight trust transactions which were the subject of charge 1. It found that the elements of charge 4 were separate and distinct from those of charge 1, as charge 1 related to Mr. Abrametz's failure to pay money by cheque to his general account for fees and disbursements, while charge 4 involved a distinct failure to maintain proper books and records.

[107] The Hearing Committee concluded that Mr. Abrametz's records were inaccurate, as they showed that, in some instances, trust funds were paid by cheque to the client as settlement funds, despite that the cheques were to be endorsed and returned to Mr. Abrametz for his own benefit. It also held that "books and records" within the meaning of Part 13(H) of the Rules included not only

Mr. Abrametz's trust ledgers, but trust cheques and statements of adjustments. It found that Mr. Abrametz "deliberately and purposefully attempted to deceive by generating multiple conflicting statements of adjustments, invoices and accounts that were neither proper nor accurate" (Conduct Decision at para 189).

[108] Mr. Abrametz submitted that the Hearing Committee erred in relation to each of these key conclusions. It was his position the conduct specified in charge 4 is the same conduct as that in charge 1, and that the Hearing Committee erred in finding that this conduct was separate and distinct and could form the basis for a separate conviction. He argued that his records accurately recorded all receipts and disbursements relating to the transactions at issue, as the trust cheques at issue were in fact issued to clients and were only later endorsed by the clients for his benefit. It was his position that the Hearing Committee erred in finding that cancelled cheques and statements of adjustments are books and records within the meaning of Part 13(H). Further, he submitted that the Hearing Committee's conclusion that he prepared draft statements of adjustments which were designed to mislead was not supported by the evidence and was thus unreasonable in any event.

[109] The only extricable error of law raised by Mr. Abrametz under this ground is that cancelled cheques and statements of adjustments are not books and records within the meaning of the relevant Rules. Those Rules provided as follows:

> 960. (1) A member shall maintain an adequate accounting system, including the books, records and accounts described in this Part, in order to record all funds and other negotiable property received and disbursed in connection with the member's law practice.
>
> …
>
> 961. (1) A member's books, records and accounts shall be maintained in Saskatchewan, and shall be:
>
> (a) in legibly handwritten form, in ink or other duplicated or permanent form;
>
> (b) in printed form; or
>
> (c) subject to subrule 961(2) in electronic form.
>
> …
>
> (3) The transactions recorded in a member's books, records and accounts shall be in chronological order, and in an easily-traceable form.
>
> 962. A member shall maintain at least the following trust books, records and accounts:
>
> …

> (f) all supporting records, including bank statements, pass books, cancelled cheques, detailed duplicate deposit slips or other records of all deposits, bank vouchers and similar documents and invoices.
>
> …
>
> 964. (1) A member shall record each trust transaction promptly, and in any event not more than 3 business days after the transaction.
>
> …

[110] The language of these Rules must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559; and s. 2-10(1) of *The Legislation Act*, SS 2019, c L-10.2, which has codified this principle. The object of these trust accounting rules, read in the context of the *LPA*, is readily apparent. Part 13 establishes detailed rules as to how members must deal with trust and non-trust funds, including the characteristics of trust accounts, procedures relating to the receipt and deposit of funds in those trust accounts, maintaining a positive balance in trust accounts, how trust funds may be withdrawn or disbursed, and record keeping. Receiving, holding and disbursing monies from trust is essential to enable members to carry on practice and an important aspect of self-regulation by the profession. The LSS made this point in its factum:

> Lawyers are privileged in their ability to control and access clients' funds which are often deposited into lawyers' trust accounts. The Law Society heavily regulates this privilege because it is necessary for clients to have confidence that their trust funds will not be improperly used by their lawyer.

[111] This statement echoes s. 3.1 and s. 3.2 of the *LPA*, which provide that the LSS must at all times act in the public interest and protect the public, and that the protection of the public takes priority over the interests of the member.

[112] Part 13(H) requires members to maintain an accounting system made up of books, records and accounts that constitute a legible, easily-traceable and chronological record of the member's law practice, including all negotiable property received and disbursed from trust accounts. Although Part 13(H) does not explicitly say that the accounting system must be accurate, that is implicit in the direction that all transactions must be recorded. The purpose of these obligations is to provide accountability to the client and the LSS. A false or misleading record does not constitute a proper record.

[113] The member must maintain at least the records specifically listed in s. 962, including "all supporting records". Cancelled cheques are expressly described as supporting records. It is less clear that statements of adjustments are trust books, records or accounts, as there is no reference to such statements in this or any other Rule, including the *Code*.

[114] I take judicial notice of the fact that statements of adjustments are commonly used in real estate and certain other transactions to specify and record the financial aspects of the sale or transaction. *Duhaime's Law Dictionary*, online: <duhaime.org>, offers the following definition of a statement of adjustments:

> A document that proposes financial reconciliation of a transaction to a specified date and requisite pay-outs to the parties to the transaction or to a defined third-party.

[115] The statements of adjustments at issue in this case are consistent with this definition. They list settlement proceeds received, and payments made or to be made for legal fees, disbursements, and GST and PST, and, in some cases, advances that had been made to the client or on behalf of the client for goods or services. Some invoices issued by Mr. Abrametz's professional corporation to these clients refer specifically to a statement of adjustments. The fact they were intended to constitute an accurate record of these financial transactions relating to trust funds is reflected not only by their content, but by the fact that they were to be signed by the client to authorize the disbursement of funds.

[116] The list of books, records and accounts in Rule 962 does not purport to be exclusive. To the contrary, the fact that section says the member must maintain "at least" those records necessarily implies that other documents may constitute records. In my view, Rule 962(f) is properly interpreted to include other documents which record the payments into and from a trust account. The fact such a document may be called a statement of adjustments is neither here nor there.

[117] Accordingly, the Hearing Committee's conclusion that the statements of adjustments *could be* records or accounts within the meaning of Rule 962(f) was correct, and its decision they *were* records is subject to review on the palpable and overriding error standard, as it does not involve an extricable question of law. The same is true of the Hearing Committee's finding of fact that Mr. Abrametz's records included notations and statements of adjustments – including the multiple statements of adjustments – that were not only inaccurate, but intentionally misleading, despite the

evidence of both Mr. Abrametz and Mrs. Abrametz to the contrary. It was for the Hearing Committee to decide whether it believed all, none or some of their evidence.

[118] These aspects of the Conduct Decision, which amount to findings of fact or mixed fact and law, disclose no palpable and overriding error. Among other things, that is so in relation to the Hearing Committee's conclusion that the records did not comply with Part 13(H) despite the fact they constituted a record of the cheques that were actually written.

[119] As to the Hearing Committee's decision that Mr. Abrametz's failure to pay money by cheque to his general account and to maintain records were distinct matters and could be the basis for separate convictions, multiple convictions are prohibited if the offences are comprised of the same or substantially the same elements: *R v Kienapple* (1974), [1975] 1 SCR 729. The *Kienapple* principle has been applied in administrative law cases: see *Merchant 2014* at para 91 and *C.(K.) v College of Physical Therapists of Alberta*, 1999 ABCA 253, [1999] 12 WWR 339. However, as in *Merchant 2014*, it was not a palpable and overriding error for the Hearing Committee to conclude that there were separate and distinct elements to charges 1 and 4. The evidence was reasonably capable of supporting the conclusion that the gravamen of charge 1 was that payments from trust were made other than to Mr. Abrametz's general account, while the gravamen of charge 4 was that he maintained deceptive records that did not disclose that the payments were for the benefit of Mr. Abrametz or for fees.

[120] For these reasons, this ground of appeal is dismissed.

B. Did the Hearing Committee err by convicting Mr. Abrametz of entering into or continuing a debtor-creditor relationship with clients?

[121] The Hearing Committee convicted Mr. Abrametz of breaching Chapter VI(d) of the *Code* by loaning money to his clients when his interests and those of the clients were in conflict. More specifically, Charge 5 alleged breaches by Mr. Abrametz of the following provision in Chapter VI(d) of the *Code*, which I will reiterate for ease of reference:

> (d) The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:

> (i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;
>
> (ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;
>
> (iii) the client consents in writing to the transaction; and
>
> (iv) there is no appearance of undue influence.

[122] However, Mr. Abrametz was not charged with the offence described in this provision – that of entering into or continuing a business transaction with the specified characteristics – but with "entering into a debtor/creditor relationship". Debtor-creditor relationships were dealt with in Commentary 4 to Chapter VI:

> 4. The lawyer should avoid entering into a debtor-creditor relationship with the client. The lawyer should not borrow money from a client who is not in the business of lending money. It is undesirable that the lawyer lend money to the client except by way of advancing necessary expenses in a legal matter that the lawyer is handling for the client.

[123] The relationship between the Rules and the Commentary and Notes was explained in that part of the *Code* titled "Interpretation":

> The commentary and notes to each rule contain a discussion of the ethical considerations involved, explanations, examples and other material designed to assist in the interpretation and understanding of the rule itself. Each rule should therefore be read with and interpreted in the light of the related commentary and notes.

[124] As noted above, the Hearing Committee bridged the gap between the language of charge 5 and the language of Chapter VI(d) by concluding that the advances were loans, and that "all debtor/creditor relationships are business transactions prohibited by the Code" (at para 221). That interpretation of Chapter VI(d) raises a question of law, reviewable on a correctness standard. So, too, does the Hearing Committee's conclusion that an advance may be a loan.

[125] As to whether an advance is a loan, the Commentary provided that a lawyer who advances necessary expenses lends money to the client. That is sufficient to confirm an advance *may* be a loan and a business transaction pursuant to Chapter VI. As would be expected, the word "loan" has been frequently defined. In *Canada Deposit Insurance Corporation v Canadian Commercial Bank*, [1990] 4 WWR 445 (Alta QB) [*Canada Deposit*], for example, Wachowich J. (as he then was) defined a loan in the context of a security agreement to mean "the lending of money with the expectation that the money will be repaid" (at 459). Similarly, in *Distribulite Ltd. v Toronto Board*

of Education Staff Credit Union Ltd. (1987), 45 DLR (4th) 161 (Ont H Ct J) at 215, Campbell J. said this:

> … every liability is not a loan and every extension of credit is not a loan.
>
> The ordinary meaning of "loan" is a sum of money given temporarily on condition that it be returned. It has also been defined as: "... a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrows": in *Re Grand Union*, 219 Fed. Rept. 353 (1915), at p. 356.

[126] This definition from *Re Grand Union* (1915), 219 F 353, was also adopted in *Bradley v Canada*, [1996] 1 CTC 2237, and in *McVey v Canada*, [1996] 2 CTC 2157 (QL), where Rip T.C.J. commented as follows:

> 48 Mogan T.C.C.J. referred to the following definition of a "loan" in *Bradley v. Canada*, [1995] T.C.J. No. 4:
>
> > In law, a loan has been defined as follows:
> >
> > > A "loan" is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrows.
> > >
> > > A "loan" within the law of usury is the delivery of a sum of money to another under a contract to return at some future time an equivalent amount with or without an additional sum agreed upon for its use.
> > >
> > > To constitute a "loan", there must be an express or implied agreement whereby one person advances money to another, who agrees to repay it on such terms as to time and rate of interest, as parties may agree. [Words and Phrases, Permanent Edition, Vol. 25A, p. 79]
>
> 49 Christie A.C.J.T.C., stated in *Simmonds & Sons Ltd. v. M.N.R.*, 89 D.T.C. 707, at p. 709:
>
> > Definitions of a loan of money are to be found in a number of publications, but to my mind this definition in Black's Law Dictionary, 5th (1979) ed. is as useful as any: "Delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it with or without interest." This is not, in my opinion, descriptive of the transactions involving letters of credit that are under consideration in this appeal. In *M.N.R. v. T.E. McCool Ltd.*, [1949] C.T.C. 395, 4 D.T.C. 700 (S.C.C.) Mr. Justice Estey said at page 413 (D.T.C. 708) with reference to the relationship of lender and borrower that: "It is necessary in determining whether that relationship exists to ascertain the true nature and character of the transaction."

[127] These definitions are consistent with the following statement by Idington J. in *Partridge v Winnipeg Investment Company* (1919), [1921] 1 WWR 839 (WL) (SCC):

> 76 … The word loan represents a contract pretty well known and defined in our laws. The loan of a sum of money is a contract by which the lender gives the borrower a certain sum under the obligation by the latter to return a similar amount with interest.

I note that interest is not an essential term of a loan: *Canada Deposit* at 459.

[128] The Hearing Committee was accordingly correct in concluding that the advances from Mr. Abrametz to his clients *could* constitute loans within the meaning of the Commentary to Chapter VI(d) and result in a debtor-creditor relationship. The conclusion that they *did* constitute loans was a question of mixed fact and law which did not involve an extricable question of law; and, as such, is reviewable on the palpable and overriding error standard. Among other things, the Hearing Committee found that it was Mr. Abrametz's typical practice to have clients sign a standard form in which they requested an advance, confirmed their understanding that a 30% attendance fee would be charged and that advances would be paid first from the recovery of any funds, and that if insufficient funds were recovered, the client would repay the amount of the advance on demand. The Hearing Committee did not err by finding these were loans.

[129] As to whether, as the Hearing Committee held, *all* debtor-creditor relationships are business transactions, I would first note that "relationship" and "transaction" are not synonyms. Chapter VI(d) says a lawyer should not "enter into" a business transaction, while Chapter VI(a) says a lawyer shall not "enter into or continue" a business transaction. That difference in language supports the conclusion that Chapter VI(d) is concerned with an event or occurrence such as the negotiation and signing of a contract or a closing, as opposed to the legal relationship that may result from that event. That interpretation is also consistent with the characteristics of a prohibited transaction specified in Chapter VI(d), which is framed with reference to the terms of the transaction, the opportunity to get independent legal advice, consent and the appearance of undue influence, and thus appear to relate to an event or occurrence such as a contract.

[130] "Transaction" takes its meaning from its context and has been interpreted as an event or occurrence, such as a contract in other contexts. In *R v Canavan*, [1970] 5 CCC 15 (WL) (Ont CA) at para 9 [*Canavan*], Schroeder J.A. noted that "[t]ransaction … has been interpreted as the justice of each case demanded rather than by any abstract definition. In its ordinary sense it is understood

to mean the doing or performing of some matter of business between two or more persons". In *R v Natanson* (1927), 49 CCC 80 (WL) (Sask CA), for example, Mackenzie J.A. commented as follows:

> 11 The term "transaction" in this connection is thus elucidated by an eminent legal writer:
>
> > A transaction is a group of facts so connected together as to be referred to by a single legal name as a crime, a contract, a wrong, or any other subject of inquiry which may be in issue. …

[131] In *R v Goldstein* (1988), 42 CCC (3d) 548 (WL) (Ont CA), Houlden J.A., having referred to *Canavan*, reasoned as follows in relation to the meaning of "transaction" in s. 510(1) of the *Criminal Code*:

> 28 Black's Law Dictionary, revised 4th ed. (1968), gives the following definition of "transaction" (at p. 1668):
>
> > It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered.
>
> 29 In my opinion, a series of acts or occurrences must be connected or related in order to constitute a transaction. For the purposes of this case, I would define "transaction" as a series of connected acts extending over a period of time. It is most important, as I will endeavour to demonstrate, that "transaction" be distinguished from "offence".

[132] *Black's Law Dictionary*, 11th edition, includes the following definitions of "transaction" that are relevant here:

> 1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. 2. Something performed or carried out; a business agreement or exchange. …

[133] In my view, the grammatical and ordinary meaning of "enter into a business transaction", read in context and harmoniously with the scheme of Chapter VI and the Rules as a whole, means an act, event or occurrence, such as entering a contract. It does not include a debtor-creditor *relationship*, as opposed to a *transaction* that results in that relationship. Some debtor-creditor relationships – for example, debts arising as a result of the operation of certain statutes – do not result from transactions. Accordingly, I must respectfully disagree with the Hearing Committee's conclusion that all debtor-creditor relationships are business transactions. The conclusion that they are was an error of law.

[134] I must also respectfully disagree with the following statement by the Hearing Committee, which underpinned its conclusion that all debtor-creditor relationships are business transactions prohibited by the *Code*:

> 218. … It is the debtor/creditor relationship, causing the divergence in interests, that the Code is intended to curtail.

[135] With respect, this overstates the matter and constitutes an error of law. Chapter VI(d) is not intended to prohibit all loans or all debtor-creditor relationships. It only prohibits certain business transactions between lawyers and their clients. The prohibited transactions include loans that are business transactions, *and* which do not have all of the characteristics specified in Chapter VI(d)(i)–(iv). Commentary 4 does not prohibit loans or business transactions that do not meet both of these criteria. Rather, it is an interpretive aid which clarifies the application of Chapter VI(d) in this context. As Mr. Abrametz noted, it is also of interest that the Commentary says only that it is "undesirable that the lawyer lend money to the client except by way of advancing necessary expenses".

[136] The question, accordingly, is the appropriate remedy relating to these errors of law. An advance may constitute a loan and a loan may constitute a business transaction within the meaning of Chapter VI(d). There was evidence to support the Hearing Committee's conclusion that Mr. Abrametz's business included lending money to his clients. He was found to have advanced money on many occasions, on fixed terms, using standard forms. The terms included payment of a 30% fee for each of these advances, regardless of the likely term, risk or amount.

[137] This Court has the authority to make any order it considers appropriate on an appeal pursuant to s. 56 of the *LPA*: *McLean v Law Society of Saskatchewan*, 2012 SKCA 7, 347 DLR (4th) 414; *Merchant 2014* and *Peet 2014*, including the power, where appropriate, to decide an issue rather than remitting it to the Hearing Committee. The facts found by the Hearing Committee support the conclusion that the advances by Mr. Abrametz were loans that resulted in debtor-creditor relationships, and that the transactions resulting in those loans were business transactions. Based on the facts, that conclusion was not only reasonable, but correct. In these circumstances, there is no need to remit this issue to the Hearing Committee.

[138] In the result, the Hearing Committee did not err in a way that requires appellate intervention by finding Mr. Abrametz guilty of charge 5.

C. Delay and abuse of process

1. Law

[139] As has been noted above, the issue relating to delay is whether the LSS proceedings against Mr. Abrametz engaged the second ground for relief as a result of delay in an administrative process – delay constituting an abuse of process. The first ground, which relates to the fairness of the hearing, was summarized in Bastarache J.'s majority judgment in *Blencoe* this way:

> 102 … Where delay impairs a party's ability to answer the complaint against him or her, because, for example, memories have faded, essential witnesses have died or are unavailable, or evidence has been lost, then administrative delay may be invoked to impugn the validity of the administrative proceedings and provide a remedy … It is thus accepted that the principles of natural justice and the duty of fairness include the right to a fair hearing and that undue delay in the processing of an administrative proceeding that impairs the fairness of the hearing can be remedied …
>
> (Citations omitted)

[140] The second ground for relief based on delay is concerned with different forms of prejudice to the respondent which impact the repute of the administrative process or system at issue. Justice Bastarache summarized this ground as follows:

> 115 I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. … It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute. …

[141] *Blencoe* related to two complaints of sexual harassment that had been filed with the British Columbia Council of Human Rights and was accordingly concerned with impact on the repute of the human rights process. In Mr. Abrametz's case, that element of the test is whether there was delay that would, in the circumstances of the case, bring the LSS disciplinary process into disrepute.

[142] Justice Bastarache was at pains to emphasize the limited scope of this ground for relief from abuse of process arising from state-caused delays, particularly where a stay is requested. As he put the matter, "delay, without more, will not warrant a stay of proceedings", as that "would be

tantamount to imposing a judicially created limitation period" (at para 101). Limitation periods are the province of legislatures, not courts. For a court to intervene on this ground, it must be satisfied that there has been both inordinate delay caused by the administrative entity, and prejudice of a certain order attributable to that delay. The following principles identified in *Blencoe* reflect these requirements:

1. The period of delay must be so inordinate as to be clearly unacceptable (at paras 115 and 121). Whether a delay is inordinate turns on contextual factors, including "the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, and whether the respondent contributed to the delay or waived the delay, and other circumstances of the case" (at para 122).

2. The party claiming abuse of process must show that the inordinate delay "directly *caused* [them] a significant prejudice" that is related to the delay itself (at para 115, emphasis added). In order for there to be abuse of process, "the delay must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (at para 133).

3. The analysis requires a weighing of competing interests. "In order to find an abuse of process, the court must be satisfied that 'the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted'" (at para 120).

4. A stay is not the only remedy available in administrative law proceedings. However, where a respondent asks for a stay, they will bear a heavy burden (at para 117). A finding of abuse of process is available only in the "clearest of cases" (at para 120).

[143] I will expand on the first three of these four principles, beginning with the meaning of inordinate delay.

[144] First, *Blencoe* makes it clear that the list of factors that bear on whether the delay was inordinate is not closed. Relevant factors may, for example, include how the delay compares to the delay in analogous cases, although that factor has limited weight (at paras 129–130); whether there has been an extended period of inactivity (at para 123); and, on a related note, whether there were ongoing communications between the parties (at para 132).

[145] Second, *Peet 2014* emphasizes that the court must be satisfied the delay is attributable to the administrative body. In that case, the Discipline Committee was unable to determine who caused the delay, as no evidence was tendered. As Richards C.J.S. commented:

> [60] … This is significant because the cases in this area indicate that, if the evidence is unclear as to who caused the delay, or if the delay was caused by the person subject to discipline proceedings, a stay is not appropriate. See: *Allen v Alberta (Law Enforcement Review Board)*, 2013 ABCA 187 at paras 51–53, 362 DLR (4th) 594 [*Allen*]; *Merchant v Law Society of Saskatchewan*, 2014 SKCA 56 at para 97, [2014] 6 WWR 643 [*Merchant 2014*].

[146] However, the need for evidence to explain the cause of delay beyond the inherent requirements of the case cuts both ways. In *Investment Dealers Association of Canada v MacBain*, 2007 SKCA 70, 299 Sask R 122 [*MacBain*], the Court found that the lack of "any real explanation" weighed in favour of finding unreasonable delay (at para 32). In *Wachtler*, the Court commented that "[u]nexplained delays of 21 months are intolerable" (at para 47). *Blencoe* takes account of the same issue (at paras 123, 173 and 178).

[147] Third, the court is not concerned with the mere effluxion of time. It is concerned with unnecessary delay that has caused impact of a certain kind. It asks whether the time taken in the administrative process exceeded the inherent time requirements of the case. It asks whether the regulator or the person regulated caused the unnecessary delay and whether the unnecessary delay attributable to the regulator caused prejudice to the regulated person. The answers to these questions turn on all of the relevant circumstances, and are necessary to enable the court to answer the question at the heart of the analysis; that is, whether "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (*Blencoe* at para 120).

[148] These questions, in turn, define when the time frame that must be analyzed begins, and when it ends. As a general proposition, that time frame would begin when the regulator or other administrative entity knows enough about the nature of and foundation for a complaint or issue that might engage its investigatory, charge, decision-making and/or enforcement processes that it would be obliged to consider taking action. It is only then that there could be unnecessary delay caused by the regulator that could cause prejudice. A well-founded complaint that engaged important and pressing interests in the context of the regulatory scheme would tend to call for a prompt and robust response. A poorly founded or suspect complaint as to an issue that, even if it was made out, would have an insignificant impact on relevant interests might not.

[149] It is common in the context of a complaint to the regulator of a profession to calculate time not from the date an investigation is launched or charges are laid, but from the date the complaint was received by the regulator: see, for example, *Wachtler*, *Abbott* and *MacBain*. *Blencoe* illustrates the same approach in relation to a human rights complaint. That would often – although not invariably – be the date that both the regulator's obligations and the interests of the public, complainants and the regulated professional in a timely process would be engaged. Indeed, those obligations and interests can be characterized as two sides of the same coin. The relevant time frame would often differ from that at issue in a criminal context, where the calculation of time is driven by the constitutional right of a person "charged with an offence" to a trial in a reasonable time. Delay is calculated from the laying of the criminal charge (*Jordan* at paras 46–48). In an administrative context, the court may – depending on the facts – be concerned with delay in either or both of the investigation and the steps taken to bring and dispose of any charges.

[150] As to when the relevant time frame to be analyzed ends, it is also common in an administrative context for the analysis to consider delay to the date of the hearing. *Wachtler* and *MacBain* are examples of that approach. However, there is no rule that date is always appropriate, or indeed, that delay after the commencement or conclusion of the hearing cannot be considered or is irrelevant. That issue was considered in *United Food and Commercial Workers, Local 1400 v Tora Regina (Tower) Limited*, 2008 SKCA 38, 307 Sask R 309, which was concerned with a lengthy delay in the issuance of an administrative decision. Justice Richards (as he then was) held that post-hearing delay could be taken into account. Writing for the Court, he commented that "we see no reason why the basic principles articulated by the Supreme Court in [*Blencoe*] should not

apply as well to post-hearing delay" (at para 17). Here, too, the question turns on the facts; that is, is there evidence of a post-hearing delay which could have been caused by the regulator, which could have exceeded the inherent time requirements, and that could have caused prejudice to the regulated person?

[151] I will turn next to the second of the four principles noted above; that is, that the inordinate delay must have directly caused the respondent significant prejudice. Several key concepts are embedded in this principle.

[152] First, the prejudice must flow from the delay itself rather than from the fact that the respondent was facing an accusation or administrative sanction. This point was made in *Peet 2014*, where Richards C.J.S. noted that it was not clear whether the adverse consequences alleged by Mr. Peet "were caused by the complaints themselves or by the delay in dealing with them" (at para 61). As he explained, this was important because "it is only prejudice resulting from delay itself which is properly weighed into the balance when determining if there has been unfairness or prejudice warranting a stay" (at para 61).

[153] Second, the personal prejudice the respondent suffers must be of such a magnitude that the public's sense of decency and fairness would be offended. As to the kind of prejudice that might, depending on the facts, reach that standard, Bastarache J. referred to psychological harm or stigma affecting a person's reputation and said he was "prepared to accept that the stress and stigma resulting from an inordinate delay may contribute to an abuse of process" (*Blencoe* at para 121). Damage to physical health, negative economic consequences, and negative impacts on family are also examples of personal prejudice of the right sort. The prejudicial impact of interim regulatory measures, such as a suspension of the right to practice, may be taken into account: *Misra v College of Physicians & Surgeons (Saskatchewan)* (1988), 52 DLR (4th) 477 (Sask CA). In my view, the extent of the inordinate delay may also be relevant in determining whether the prejudice suffered is of sufficient magnitude to meet this requirement.

[154] It is fair to say that the case law has abided by *Blencoe*'s insistence that evidence of delay, without more, is not enough to constitute an abuse of process. That is so even where the administrative process related to serious allegations of professional incompetence or misconduct, which, one might reasonably argue, could generally be characterized as prejudicial per se.

[155] *Peet 2014*, for example, related to charges against Mr. Peet of failing to serve to clients in a diligent manner and failing to reply promptly to Law Society communications. A formal complaint was issued and a hearing committee appointed July 9, 2010. The proceedings of the hearing committee did not begin until July 2012. Mr. Peet deposed that the extended period of pending discipline and the publication of the complaint against him, without any explanation for the delay, had unfairly affected his professional and personal circumstances. Faced with this evidence, the Court emphasized the need for *actual* prejudice (at para 56) and found that Mr. Peet's evidence fell short of demonstrating significant prejudice or stigma.

[156] In *Merchant 2014*, the delay, measured from the date of the complaint to the Law Society and the hearing of the complaint, was 81 months. However, the time between the report of the investigation committee leading to the hearing of charges and the finding of guilt was less than one year. A hearing committee refused relief, finding there was no "proven substantial prejudice" to Mr. Merchant's defence and the cause of the delay was not solely, or in the main, due to the Law Society.

[157] In *Robertson*, there was a delay of 35 years in bringing disciplinary proceedings against Mr. Robertson for sexual misconduct as a teacher. The Court of Appeal found that Mr. Robertson had not suffered personal prejudice, as the failure to pursue disciplinary action meant he had been able to carry on his teaching career for 30 years.

[158] I will turn finally to the third of the four principles noted above; that is, the requirement to weigh competing interests when considering whether an abuse of process has occurred. This balancing requirement, which lies at the heart of the enquiry, is reflected in Richards C.J.S.'s comment in *Peet 2014* that "even long delays do not readily outweigh the public interest in seeing complaints of the sort in issue here resolved on their merits" (at para 62), citing *Robertson*; *Merchant 2014*; *Allen v Alberta (Law Enforcement Review Board)*, 2013 ABCA 187, 362 DLR (4th) 594 [*Allen*]; and *Sazant v College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 OR (3d) 420 [*Sazant*], in support of that proposition. The same point was strongly emphasized in *Abbott* at paragraphs 31–35. As Lauwers J.A. there commented:

> [61] It is serious business for an adjudicative body to disturb, on grounds of investigative and prosecutorial delay, what would otherwise be the ordinary operation of the disciplinary scheme. This is because two public interests are in tension, as the Supreme Court noted in *Blencoe* at para. 120: "the public interest in the fairness of the administrative

> process should the proceeding go ahead", on the one hand, and, on the other hand, "the harm to the public interest in the enforcement of the legislation if the proceedings were halted".

[159] To be sure, each of the cases cited by Richards C.J.S. involved long delays and reflect the high threshold established by *Blencoe.* However, those cases also demonstrate the importance of the context as a whole and differ in important respects from Mr. Abrametz's case.

[160] *Robertson* is a striking illustration of this principle. The Court found (at para 80) that permitting Mr. Robertson to avoid a disciplinary hearing would carry a serious risk of bringing the regulatory process into disrepute, despite the extraordinary 35-year delay. That conclusion – which is readily understandable – demonstrates the importance of the nature of the alleged misconduct, issue or complaint, considered in the context of the regulatory scheme and the interests it is intended to serve and promote. Self-evidently, the interests of complainants and the possibility of a continuing risk to others would be of great significance if there are allegations of sexual misconduct by a teacher involving students that the regulator has good reason to believe are well-founded. Further, society's abhorrence of sexual misconduct of the kind alleged, and the likelihood that a very serious remedy will generally be imposed if that misconduct is made out, are also relevant.

[161] *Abbott* also demonstrates that the gravity of the alleged misconduct and its impact on those directly affected by the alleged misconduct – such as complainants in a human rights or professional misconduct setting – are important considerations. That case was concerned with the availability of a reduction in sentence, rather than a stay, as a remedy for delay. The Court concluded (at paras 78–80) that the fact there was a presumptive penalty of license revocation for participating in mortgage fraud – which in turn reflected the gravity of the alleged misconduct in relation to the keystone principle of the integrity of the legal profession – was a contextual factor that required the offender to establish that the delay was so egregious and the prejudice caused sufficient harm that license revocation would bring the regulatory system for lawyers into disrepute.

[162] *Sazant*, like *Robertson*, related to allegations of sexual misconduct, being the sexual abuse of four adolescent patients by the appellant physician. The penalty for such misconduct was mandatory license revocation. The College first learned of the allegations in 1998 and began to

investigate only in 2004, having chosen in the meantime to follow its usual practice of awaiting the outcome of criminal proceedings. Dr. Sazant practiced on conditions relating to patients under the age of 16 beginning in 1999.

[163] Immediately before the commencement of the hearing in April 2007, Dr. Sazant unsuccessfully applied to stay the proceedings as an abuse of process. He then unsuccessfully applied to stay the hearing based on constitutional grounds. The Discipline Committee found him guilty of sexual misconduct with three young patients.

[164] Dr. Sazant had led evidence that he suffered from anxiety and depression, that media coverage had been humiliating and a source of distress, and that he was forced to sell his office building to pay legal fees. The Divisional Court rejected his submission that the negative impact of the delay on his reputation, mental health and lifestyle were so serious as to bring the administration of justice into disrepute. It noted he had not been suspended and had maintained a very healthy practice. It also found that most of the stigma and stress resulted from the criminal proceedings, rather than the delay. Finally, it emphasized the serious nature of the allegations and the interest of the complainants in having their complaints determined on the merits.

[165] The Court of Appeal found there was no basis to interfere with the decision of the Divisional Court.

[166] In *Allen*, the appellant police officer urged the Court not to direct a new hearing, as the events which led to disciplinary proceedings against him had happened in 2005, eight years before. The Court noted that there were unexplained gaps in the proceedings but that it could not determine from the record whether any of the delay was avoidable and who was responsible. Further, it commented that those responsible for ensuring the timely prosecution of police disciplinary matters could consider the reasons for delay and decide if further proceedings were warranted.

[167] *Wachtler* is also of particular interest. The complaints against Dr. Wachtler related to competence, including inappropriate prescribing of narcotics. Two of his patients had died of drug overdoses. There was a 53-month delay from the filing of the complaint with the College of Physicians and Surgeons to the hearing. The Court found that Dr. Wachtler was responsible for 7 months of the delay and that the proceeding should have taken no more than 12 months. It

accordingly concluded there were 34 months of delay attributable to the College. Dr. Wachtler testified that he suffered from stress and anxiety, had quit his walk-in clinic and re-established his practice elsewhere, requiring that he work very long hours. He also said his marriage had suffered. The Court concluded that he had shown some prejudice, but had not demonstrated it had reached the level to constitute one of those rare cases where delay was sufficient to demand a stay.

[168] However, the Court did conclude there had been an abuse of process that called for a remedy. On that basis, it reduced Dr. Wachtler's suspension by two months and struck the award of costs against him. In doing so, it made the following comments, which I endorse:

> [46] … In any administrative proceeding where someone is at risk of sanction for the manner in which they conducted themselves professionally, the allegation of misconduct has to weigh heavily on that person. He or she is entitled to have the misconduct investigated and a hearing held within a reasonable time, so that he or she can carry on with the provision of professional services to the public. … [R]egardless of attempts to keep matters confidential before results are made known, no system provides for perfect confidentiality, meaning that a cloud of suspicion may also descend on the professional while the prosecuting body conducts its leisurely process.
>
> [47] From another perspective, persons who are patients or clients of the accused professional also have an interest in the process moving with dispatch, as they may be at risk of harm. The disciplinary body must also ensure that the public's concerns are met on a timely basis. …
>
> …
>
> [49] It is also important to impress upon disciplinary bodies that there will be consequences for undue delays. Delay becomes the norm when it has no consequence. One alleged benefit of administrative processes is that they avoid the formalities of court process in the interests of speedy justice. … Simply telling those responsible for professional discipline that they must do better or, worse, turning a blind eye to delay, leads to more delay. …

[169] Before concluding my comments relating to the four principles noted above, I note that in his dissenting opinion in *Blencoe*, LeBel J. made the following comments as to the weighing of interests at the heart of the analysis:

> 159 In order to differentiate reasonable and unreasonable delay, a balancing exercise becomes necessary. Courts must, indeed, remain alive not only to the needs of administrative systems under strain, but also to their good faith efforts to provide procedural protections to alleged wrongdoers. One must approach matters with some common sense and ask whether a lengthy delay that profoundly harms an individual's life is really justified in the circumstances of a given case.
>
> 160 As indicated above, the central factors toward which the modern administrative law cases as a whole propel us are length, cause, and effects. Approaching these now with a more refined understanding of different kinds and contexts of delay, we see three main factors to be balanced in assessing the reasonableness of an administrative delay:

> (1) the time taken compared to the inherent time requirements of the matter before the particular administrative body, which would encompass legal complexities (including the presence of any especially complex systemic issues) and factual complexities (including the need to gather large amounts of information or technical data), as well as reasonable periods of time for procedural safeguards that protect parties or the public;
>
> (2) the causes of delay beyond the inherent time requirements of the matter, which would include consideration of such elements as whether the affected individual contributed to or waived parts of the delay and whether the administrative body used as efficiently as possible those resources it had available; and
>
> (3) the impact of the delay, considered as encompassing both prejudice in an evidentiary sense and other harms to the lives of real people impacted by the ongoing delay. This may also include a consideration of the efforts by various parties to minimize negative impacts by providing information or interim solutions.
>
> (Emphasis in original)

[170] This list of factors has been adopted by other courts: see, for example, *Paul v Canadian Broadcasting Corporation*, 2001 FCA 93 at para 60, 198 DLR (4th) 633; *Ching v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839, 50 Admin LR (6th) 1; *Canada (Citizenship and Immigration) v Parekh*, 2010 FC 692 at paras 28–29, [2012] 1 FCR 169; *Chabanov v Canada (Citizenship and Immigration)*, 2017 FC 73 at paras 47–48, 14 Admin LR (6th) 141; *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 at para 53, 20 Admin LR (6th) 207; and *Stinchcombe v Law Society of Alberta*, 2002 ABCA 106 at para 47, 212 DLR (4th) 675. In my view, it is consonant with the analytical framework described in Bastarache J.'s majority judgment and a useful lens in assessing the central issue.

[171] Before dealing with the facts of Mr. Abrametz's case, I will briefly return to the access to justice concerns highlighted in the Introduction to these reasons – the lodestar both there and in the *Blencoe* analysis being *justice*. The connection between justice and the passage of time, or cast in *Blencoe* terms, between delay and justice is readily apparent. The same is true of the concern with the extent of and responsibility for the delay. There is no lack of access to *justice*, and thus no perceived unfairness that might bring the relevant administrative process into disrepute, if the delay was caused by the party who complains of that delay. Nor will there be perceived unfairness if the delay is an inherent part of a fair process, or the reasonable result of investigatory hurdles or complexity. Justice delayed is not always justice denied.

[172] The same connection exists between justice and other relevant contextual factors, such as the nature of the alleged misconduct, and the impact of that misconduct on interests protected by the administrative scheme. Those interests include not only the relevant public or profession, but those of complainants and those who are the subject of their complaints. The contextual analysis reflects the fact that while our conception of justice has essential elements, the question of whether those elements can be adequately served and justice can be done if an administrative process proceeds can be complex, as it may engage many factors and interests. If justice can be done in this sense – not perfectly, but to an acceptable standard in the circumstances – "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (*Blencoe* at para 120). Access to justice will have been provided.

2. Delay: Analysis

[173] Turning now to the application of this legal framework to the facts, the first issue that must be addressed is whether the delay was inordinate. I must determine when the relevant time frame that must be analyzed to determine if there has been inordinate delay began, and when it ended. I must then decide whether the undue delay caused by the LSS was so inordinate as to be "clearly unacceptable".

[174] In the Stay Decision, the Hearing Committee found that the delay was for a period of 66 months, calculated from the initiation of the audit in December 2012 to the date of the Conduct Decision. The Conduct Decision was issued January 10, 2018, 61 months after the audit commenced. The Hearing Committee also said that the delay between December 2012 and the date of the discipline hearing was 66 months. Final arguments in the discipline hearing were on September 29, 2017, and final written submissions were filed October 16, 2017, 58 months after the audit commenced.

[175] It is, accordingly, not clear how the Hearing Committee concluded the delay was 66 months. Neither party took issue with that conclusion, which was – as a matter of simple arithmetic – a palpable error.

[176] Here, there was no complaint from a client or third party. It is not clear how much the LSS knew before Mr. Allen first attended at Mr. Abrametz's office on December 5, 2012. However, Mr. Allen did receive the self-report on December 4, 2012, and first attended Mr. Abrametz's office the next day. Mr. Abrametz knew this was not a standard audit, but one generated by concerns which had been identified by the LSS. When Mr. Allen went to Mr. Abrametz's office on December 5, he knew enough about what he was looking for that he was able to produce the results that led the CIC to draft the first Notice of Intention to Interim Suspend in early January. That Notice identified allegations of serious professional misconduct and, given the prospect of an interim suspension, demonstrated that the CIC had decided there were important public interest concerns.

[177] In these circumstances, I am of the same mind as the Hearing Committee. The clock started ticking on December 4, 2012. By that time, the LSS was obliged to take further action. Further, Mr. Abrametz knew enough that there was a connection to the alleged prejudice, which included the effects of stress.

[178] In this case, I would stop the clock on May 17, 2017, the date the hearing commenced. Although the hearing was not finally concluded until October, there was no suggestion that any of the delay that occurred after May 17 should be laid at the feet of the LSS. The same is true in relation to the time taken to issue the Conduct Decision, which was less than three months after the receipt of the final written submissions. That is a reasonable period of time to have taken to write the decision and did not exceed the inherent requirements of the case. For these reasons, none of the time that passed after May 17 could count as undue delay, and there is no need to consider that time further in the analysis.

[179] For these reasons, I must consider the time frame from December 4, 2012, to May 17, 2017, a period of 53 months. I must determine what portion of the period was inherent to the process and what portion was attributable to Mr. Abrametz. In doing so, I must defer to the Hearing Committee's findings of fact, except those that disclose palpable errors. Finally, I must decide whether the Hearing Committee erred by finding that the time remaining – being the period of undue delay attributable to the LSS – was so inordinate as to be clearly unacceptable.

[180] Here, the Hearing Committee concluded that the delay from the commencement of the audit to the issuance of the Conduct Decision was neither unacceptable nor inordinate due to the complexity of the case, the size of the investigation and the delay attributable directly to Mr. Abrametz's conduct. It said Mr. Abrametz ceased to cooperate after May 2015, a comment that referred to his determined resistance to the demand to produce his tax records. As noted above, the Hearing Committee specifically referred in this context to the five-month period from March 2016 to August 2016 when Mr. Abrametz's application for an adjournment pending completion of the tax investigation was before the Court of Queen's Bench. It also referred to Mr. Abrametz's complaint against Mr. Huber.

[181] With respect, it is my view the Hearing Committee's analysis reveals a series of palpable errors. Dealing first with the size and complexity of the investigation in general, Mr. Allen had made a start on investigating Mr. Abrametz well before he began the audit in December 2012. He was assisted in relation to parts of the investigation from the outset by Mr. Abrametz's self-report. It is telling that his investigation was sufficiently advanced by January 2013 – the month following his initial visit to Mr. Abrametz's office – that the CIC had decided there was sufficient evidence to prepare a Notice of Intention to Interim Suspend that referred to five issues which resulted in six of the seven charges that were finally brought against Mr. Abrametz in October 2015.

[182] Mr. Allen described his investigation as "considerable" and said it was "exceptionally difficult" to examine Mr. Abrametz's confusing records. Beyond those general statements, there is very little evidence of what Mr. Allen did in 2013 and no particulars of what he did in 2014, other than that he completed his trust report in October 2014. We know that the CIC negotiated the practice conditions with Mr. Abrametz in February and March 2013. However, there is nothing to suggest that negotiation prevented the audit from proceeding. Indeed, Mr. Allen had prepared a draft of his trust report, which is described in Mr. Huber's time records as 1,102 pages with attachments, by March 6, 2013. The final report, which followed 19 months later, was 1,301 pages with attachments.

[183] It is, of course, necessary to consider the impact of the tax issue. Mr. Allen did not happen upon the tax issue in September 2013, when he first asked for tax records from Mr. Abrametz's counsel. The allegation of tax evasion was made in the first Notice of Intention to Interim to

Suspend. Mr. Allen was aware by October 2013 that Mr. Abrametz was resisting disclosure of his personal tax records. There was, however, no other evidence as to how and to what extent his inability to get those records delayed either the audit or the completion of the trust report.

[184] Further, there was no evidence that Mr. Allen pursued the issue with Complaints Counsel as he had told Mr. Abrametz's counsel he would in November 2013. Similarly, although Mr. Huber's time records show that he spent .5 hours on July 16, 2014, researching case law relating to the prosecution of LSS members for conduct associated with tax evasion schemes, there was no evidence he pursued the issue with Mr. Abrametz's counsel until March 2015. The s. 63 proceedings were finally initiated by the LSS only in June 2015, very shortly before the decision to bifurcate the proceedings.

[185] Mr. Allen did depose that there were many documents to review and transactions to recreate. He attended at Mr. Abrametz's office again in August 2013 and said he corresponded with Mr. Abrametz throughout that year. That said, volume and complexity are not the same and, as the CIC found, Mr. Allen had the benefit of Mr. Abrametz's cooperation throughout this period. Indeed, the evidence does not support the conclusion that Mr. Abrametz did not "cooperate" – except by taking issue with the demands he produce his tax records, as he was entitled to do – at any time, and the Hearing Committee committed a palpable error by concluding he was uncooperative. While Mr. Allen may have lacked the resources to complete his investigation more quickly, there is no basis to conclude that the LSS could not have readily provided or obtained additional resources that would have enabled him to do so.

[186] The only reasonable inference to be drawn is that there were significant periods of time when Mr. Allen either chose or was obliged to do other things, whether personal or professional. Either way, the responsibility rests with the LSS. As the Court said in *Blencoe* at paragraph 135, "[l]ack of resources cannot … justify inordinate delay where it is found to exist".

[187] There was no other evidence to suggest that this investigation and prosecution were sufficiently complex to explain the initial 22-month delay. Mr. Huber deposed that he spent only 160 hours on the file between January 2013 and February 2017, or an average of 40 hours per year. That does not suggest unusual complexity, particularly given that a good deal of that time was spent on the various court proceedings relating to the production of Mr. Abrametz's tax records

that were played out after the proceedings were bifurcated. Nor does the 172 hours spent by Ms. Prisciak – which would inevitably have included extra time learning a file that Mr. Huber already knew – suggest unusual complexity. I note that the Hearing Committee did not refer to this important evidence as to the time spent by LSS counsel at all.

[188] In the result, the 22-month delay from the commencement of the audit to the completion of the trust report has not been adequately explained by the LSS. The Hearing Committee committed palpable errors of fact as to both the size and complexity of the investigation and Mr. Abrametz's alleged failure to cooperate and, as a result, erred by failing to conclude that Mr. Allen should have been able to deliver the trust report long before he did. Based on the content of the draft and the final report, considered in the context of the evidence as a whole, I conclude the final report should have been completed by the end of June 2013, which was approximately four months after Mr. Huber had reviewed the draft. I would characterize 15 months of that initial 22-month period as unexplained, and as constituting undue delay.

[189] The evidence as to the 12-month delay between the completion of the trust report and the issuance of the Formal Complaint is equally troubling. Mr. Huber questioned Mr. Abrametz on February 5, 2015, and had prepared an early draft of the CIC report and considered charge wording by March 12, 2015. I am unable to conclude that work was not done within a reasonable period of time.

[190] However, the same cannot be said for the period after March 12. The CIC report – a four-page document which specified the charges – was executed 4 ½ months later, on July 27, 2015. The record discloses that a significant part of this delay, and the 11-week delay until the October 12, 2015, execution of a Formal Complaint which reiterated the charges specified in the CIC report, coincided with the CIC's decision to finally pursue the s. 63 demand and proceedings. Put differently, a decision was made to focus on the tax issue – which the LSS had allowed to languish since Mr. Allen's unsuccessful attempt to obtain tax records from Mr. Abrametz's counsel in October 2013 – rather than expeditiously moving the other charges forward at the same time. Further, Mr. Huber's time records confirm that he spent an average of only a few hours per month on the file in the seven months between March and October 2015. Although there may have been a reasonable explanation as to why he was unable to do more, it was not provided.

[191] In the result, the 12-month delay between the issuance of the trust report and the issuance of the Formal Complaint on October 12, 2015 – 34 months after the audit commenced, and 33 months after the LSS had first identified the issues that led to six of the charges – was also not adequately explained. Based on the record, I would conclude that not less than 6 months of that 12-month period should be counted as undue delay.

[192] Dealing next with the ten-month period between the issuance of the Formal Complaint and the August 20, 2016, Adjournment Decision, it must be kept in mind that the CIC had decided in July 2015 to bifurcate the investigation. For that reason, any complexity or inherent delay relating to the continuing dispute as to the production of Mr. Abrametz's tax records cannot be used to justify delay in the other branch of the bifurcated process, being the seven charges specified in the Formal Complaint. It is the process relating to that other branch that is at issue on this appeal.

[193] For that reason, it is my view that the Hearing Committee committed a palpable error of fact in deciding that the five-month period from March 28, 2016, when Mr. Abrametz filed his adjournment application, and August 20, 2016, when the Adjournment Decision was issued, was delay attributable to Mr. Abrametz. That application was an entirely reasonable response to the decision to bifurcate and might well have been granted. Although there is evidence the decision to bifurcate was made to *avoid* undue delay, that concern with delay was the result of the unexplained failure by CIC to pursue the tax issue long before. In these circumstances, it is my view that the five-month delay for the adjournment application cannot be properly attributed to Mr. Abrametz – who raised legitimate concerns which have been borne out by what has since occurred – or to the inherent requirements of the process, and constituted undue delay.

[194] The Hearing Committee did not comment as to the delay between October 13, 2015, and April 2016. That was the period during which Mr. Abrametz's applications to cross-examine Ms. Sigmeth and to quash the subpoenas were before the Court of Queen's Bench. The second application was a reasonable response in the face of the CIC's decision to pursue both a s. 63 application by the LSS and to issue the subpoenas, which were found to be an abuse of process. Success was mixed. I would attribute half of this delay to each of the parties.

[195] In the result, it is my view that seven months of the ten-month period between the issuance of the Formal Complaint and the August 20, 2016, Adjournment Decision should be counted as undue delay.

[196] An additional nine months passed between the issuance of the Adjournment Decision and the commencement of the conduct hearing. Some time was taken up by the slow initial response to Mr. Abrametz's request for further disclosure, and with scheduling difficulties, including those caused by the absence of Mr. Allen for three months. That delay cannot be attributed entirely to the inherent requirements of the file, nor to Mr. Abrametz. I would count three months of that period as undue delay.

[197] For these reasons, I would conclude that of the 53-month period under consideration, only 18 months were inherent to the process, and only 2 ½ months were attributable to Mr. Abrametz. The remainder, totaling 32 ½ months, was undue delay. The Hearing Committee's failure to reach that conclusion was the result of the palpable and, taken together, overriding errors referred to above, and its failure to correctly apply the law to the facts. This delay did not marginally overshoot what might have been considered appropriate. In my respectful opinion, it so grossly exceeded the inherent requirements of this case as to be "clearly unacceptable" within the meaning of *Blencoe*.

[198] I turn next to the issue of whether Mr. Abrametz suffered significant prejudice as a result of this inordinate delay. The Hearing Committee accepted that Mr. Abrametz's reputation had suffered as a result of media attention in early 2018, after the Hearing Committee issued the Conduct Decision. It did not refer to the September 2017 media report of the conduct hearing, which cast Mr. Abrametz in a very unfavourable light. However, given that I have concluded that any delay after May 17, 2017, was reasonable and inherent to the process, prejudice which first occurred after that date – absent evidence it was exacerbated by the delay attributable to the LSS – lacks the necessary causal connection between undue delay and prejudice.

[199] However, it does not follow that there was no evidence that the investigation and charges had been disclosed to a wider audience. Members of the bar and Mr. Abrametz's staff, at least, knew he was being investigated and was practicing under supervision as a result of misconduct allegations. The LSS publishes information relating to disciplinary proceedings on its website. Here, particulars of the investigation were disclosed in the s. 63 application, and in the

Adjournment Decision and the September 29, 2016, decision of Schwann J., both of which were published. These allegations were certainly not confidential. The Hearing Committee's failure to consider the fact that Mr. Abrametz practiced under the cloud of suspicion referred to in *Wachtler* for more than four years constituted an error in the application of the law.

[200] The Hearing Committee did find that Mr. Abrametz had suffered "some degree of stress" since December 2012 and that what it called a "minor medical condition", being the high blood pressure which he deposed was a result of the lapse of time. It then concluded those impacts were the result of the allegations and the Conduct Decision, not the delay. However, I have concluded that the lengthy period of delay between the date the audit began and the date of the hearing was primarily attributable to the LSS, and that the Hearing Committee erred by failing to reach that conclusion. As such, the stress Mr. Abrametz suffered as a result of both the allegations and investigation lasted far longer than it would have absent that failure. Consequential impact of that kind is, of course, the very point of this aspect of the delay analysis.

[201] In my respectful opinion, the Hearing Committee's reasons reveal other errors in deciding whether the undue delay caused prejudice of sufficient magnitude to Mr. Abrametz. First, the Hearing Committee referred to the stress suffered by Mr. Abrametz's family and employees only in the s. 7 *Charter* analysis. It did not refer to that impact at all in the *Blencoe* analysis of prejudice. I conclude they were not taken into account in that context, which is an error in applying the law to the facts.

[202] Second, the Hearing Committee completely discounted the fact that Mr. Abrametz had been forced to practice under intrusive conditions. Their reasons for doing so were flawed. The Hearing Committee (at para 58) took that approach in part because it found the practice conditions were consistent with the LSS's mandate of protecting the public. The fact that those conditions may have been appropriate in this sense and, indeed, benefitted Mr. Abrametz by enabling him to continue practicing law, is not relevant to the question of whether prejudice has occurred because he was subject to those conditions for far longer than necessary. Further, the Hearing Committee took account of Mr. Abrametz's "consent" to those conditions. With respect, that confused form with substance. Mr. Abrametz did not consent to practicing under conditions in any real sense. His other choice was to forgo his right to practice law at all.

[203] Third, the Hearing Committee took account (at para 59) of the fact that Mr. Abrametz had been found guilty of most of the charges levelled against him in the prejudice analysis. Although it is not clear, it appears that the Hearing Committee thought that this, too, confirmed that the practice conditions were appropriate. With respect, that "justification" has no bearing on the question of whether Mr. Abrametz was subject to these conditions – which any reasonable observer would characterize as prejudicial – for an unreasonable period of time as a result of delay.

[204] All of this leads me to conclude that Mr. Abrametz has demonstrated that there was unreasonable delay which resulted in very significant personal prejudice of such magnitude that the public's sense of decency and fairness would be affected.

[205] With that, I turn to the heart of the matter, the weighing of competing interests. Should the Hearing Committee have decided that damage to the public interest in the fairness of the LSS disciplinary process if the proceedings continued would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted? In addition to my conclusions as to the inordinate delay and prejudice suffered by Mr. Abrametz as a result of that delay, I note the following key considerations relating to this aspect of the contextual analysis.

[206] The nature and purpose of the proceedings against Mr. Abrametz are relevant. These were serious charges that touched on matters of importance to the public interest that the LSS is mandated to protect, and accounting mechanisms that are a linchpin of the regulatory framework for lawyers. While the Penalty Decision is not directly at issue here, it is of interest to note that the Hearing Committee there found that Mr. Abrametz's conduct "strikes a blow against the fundamental principles of the legal profession's code, namely; honesty, trustworthiness".

[207] While that is a fair comment, it adds little to the analysis when taken alone. The question remains: to what extent did it strike such a blow, and with what impact on the public interest and protection of the public and, to a lesser extent, on the profession? The Hearing Committee gave its answer to that question in the Penalty Decision. It found that this case was best compared to *Oledzki*, *Duncan-Bonneau* and *Aguirre*, all of which involved fraud or misappropriation of funds and resulted in disbarment or the equivalent outcome of resignation.

[208] With respect, it is my view that this overstated the matter. Those decisions are distinguishable from this case. The same is true of *Sazant* and *Abbott*, where there was a well established and presumptive penalty of disbarment for participating in mortgage fraud. Mr. Abrametz's case did not fit neatly into a pigeon-hole of that kind. Although the offences with which Mr. Abrametz was charged implicated important interests, he did not misappropriate funds. The alleged criminal conduct of tax evasion was not in play. Further, he was a very long-standing practitioner with no prior disciplinary record, and had, by the time of the hearing, been effectively compelled to practice under supervision for in excess of four years. Given the primary importance of the public interest and protection of the public, the fact that he had done so without incident is significant.

[209] It is, in my view, also significant that none of Mr. Abrametz's clients complained to the LSS or testified at the conduct hearing. As noted above, this too is an important distinction between this case and cases such as *Robertson*, *Abbott* and *Sazant*. This factor was also highlighted in *Blencoe*, where Bastarache J. – in discussing whether a stay was an appropriate remedy – commented that "[a] stay accords very little importance to the interest of implementing the *Human Rights Code* and giving effect to the complainants' rights to have their cases heard" (at para 117). In his reasons, Lebel J. emphasized the significance of the complainant's interest from the outset, commenting as follows on whether a stay was an appropriate remedy:

> 139 Nevertheless, I agree that a stay of proceedings was not warranted in the circumstances of the case and should be lifted, as suggested by Bastarache J. Such a remedy took no consideration of the interest of the complainants Irene Schell and Andrea Willis in the proceedings of the British Columbia Human Rights Commission ("Commission"). Nobody benefits from delay, but the interests of innocent parties must influence our choice of remedy. The Court of Appeal seems to have dealt with this case as if it were a pure conflict between the respondent and the state, without taking into account that the complainants Schell and Willis also had an important interest in an efficient disposition of their allegations against Blencoe and in the correct and timely application of the appropriate administrative law remedies.
>
> (Emphasis in original)

[210] He later amplified these comments:

> 180 Whoever asks for a stay of proceedings carries a heavy burden. In a human rights proceeding, such an order not only stops the proceedings and negates the public interest in the enforcement of human rights legislation, but it also affects, in a radical way, the interest of the complainants who lose the opportunity to have their complaints heard and dealt with.
> …

[211] I do not suggest that the presence, absence or views of complainants or others directly involved in an administrative proceeding is determinative. As Lebel J. said in *Blencoe*, at paragraph 180, there are circumstances in which the interest of complainants must give way to "the safeguarding of the basic rights of the respondent engaged in a human rights proceeding and the preservation of the essential fairness of the process itself".

[212] With that, I would again return to my comments in the Introduction to these reasons. As is there noted, Mr. Abrametz submitted that ordering a stay based on an abuse of process required a change in approach, and that such a change was justified by the decisions in *Jordan* and *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395. I would reiterate my view that a decision to impose a stay is consistent with *Blencoe* and, at most, might be characterized as invigorating the principles which animated that decision, taking account of the circumstances of this case. It bears repeating that, as Bastarache J. said in *Blencoe*, at paragraph 115, "[w]here inordinate delay has … attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process".

[213] The same is true of the system for regulating the conduct of lawyers. Mr. Abrametz, like the appellant in *Wachtler*, was entitled to have his alleged misconduct investigated and the hearing held within a reasonable time. Allegations of serious professional conduct generally weigh heavily, raising as they do the prospect of damage to livelihood, reputation, and mental and physical health as a result of delay and regardless of outcome. Where charges are unfounded or are not made out, an unwarranted cloud of suspicion may have descended and never dissipate. A rush to judgment may occur. These dangers have become ever more pressing at a time when notices of disciplinary measures are published on law society websites for all to see, and information is so often shared quickly, widely, and in small and misleading bites. Delay has taken on a new meaning in the online age.

[214] Here, the Hearing Committee found that Mr. Abrametz suffered stress and stigma from the time these proceedings were initiated. His family and staff were impacted. By any reasonable measure, and in the eyes of a reasonable observer, the delay that occurred was unacceptable. With respect, the contrary conclusion could only be reached by those who have become inured to delay. The public was protected by the swift action taken by the CIC, and the imposition of conditions

which effectively operated as an interim sanction. Mr. Abrametz faithfully abided by those conditions. By the time this application was heard by the Hearing Committee, Mr. Abrametz had paid a heavy price for the serious misconduct he was found to have committed by the Hearing Committee – including by having been convicted of the charges specified in the Formal Complaint – and the public's interest in enforcement had been well served.

[215] It is my view, taking account of all of these contextual factors, that the undue delay in this case was inordinate, and caused actual prejudice of such a magnitude that the public's sense of decency and fairness would be offended. In these circumstances, the delay would bring the LSS disciplinary process into disrepute. This was the clearest of cases.

[216] For these reasons, there was an abuse of process. The Hearing Committee erred by failing to find that the damage to the public interest in the fairness of the LSS regulatory system if these proceedings continued would exceed the harm to the public interest in the enforcement of the *LPA*, Rules and *Code* if the proceedings were halted. A stay was the appropriate remedy, and Mr. Abrametz's application for that remedy should have been granted by the Hearing Committee in the Stay Decision.

VI. CONCLUSION

[217] For these reasons, I would allow the appeal on the ground that the Hearing Committee erred by dismissing Mr. Abrametz's application to stay the proceedings as a result of undue delay constituting an abuse of process. The LSS proceedings which were commenced by the Formal Complaint are stayed. In the result, the penalty and costs award imposed by the Penalty Decision are set aside. The findings of professional misconduct stand.

[218] Finally, Mr. Huber's name featured prominently in this judgment, as he was both counsel and a deponent. I wish it to be clear that I did not conclude and do not suggest that Mr. Huber lacked competence, acted unprofessionally, or bears personal responsibility for what occurred.

[219] Mr. Abrametz shall have his costs of the application to stay the order granted in the Penalty Decision and of this appeal in the usual way.

"Barrington-Foote J.A."

Barrington-Foote J.A.

I concur. "Ottenbreit J.A."

Ottenbreit J.A.

I concur. "Leurer J.A."

Leurer J.A.