

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

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF SHANE SMITH  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Erin Runnalls – Chair  
Robert Philp, KC – Former Bencher  
Catherine Workun, KC – Adjudicator

**Appearances**

Shane Sackman – Counsel for the Law Society of Alberta (LSA)  
Shane Smith – Self-represented

**Hearing Date**

December 19, 2023

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Overview**

1. Shane Smith was admitted as a member of the LSA on September 25, 2006. His practice focused primarily on immigration law. Following the administrative suspension for the non-payment of Mr. Smith's active fees from June 3, 2018, Mr. Smith changed his status to "Inactive/Non-Practising" on August 30, 2018. Mr. Smith was then suspended on March 15, 2019 for non-payment of his inactive fees. Mr. Smith is currently a suspended member of the LSA.
2. A number of complaints were received in 2018 to 2019 against Mr. Smith. As a result the following citations were directed to hearing by the Conduct Committee Panel on October 22, 2019 and June 17, 2020:

Complaint #1

- 1) It is alleged that Shane Smith failed to serve his client, J.G., and that such conduct is deserving of sanction.

### Complaint #2

- 2) It is alleged that Shane Smith failed to serve his clients, F.L. and R.L., and that such conduct is deserving of sanction.
- 3) It is alleged that Shane Smith failed to repay money owing to his clients, F.L. and R.L., as a result of a review or assessment of his accounts as soon as was practicable, and that such conduct is deserving of sanction.
- 4) It is alleged that Shane Smith failed to respond to communications from the Law Society and that such conduct is deserving of sanction.

### Complaint #3

- 5) It is alleged that Shane Smith failed to take the requisite steps upon withdrawal from his client S.G.'s matter, including by failing to take all reasonable steps to facilitate the orderly transfer of S.G.'s matter to a successor lawyer, and that such conduct is deserving of sanction.
- 6) It is alleged that Shane Smith failed to respond to communications from the Law Society and that such conduct is deserving of sanction.

### Complaint #4

- 7) It is alleged that Shane Smith failed to respond to communications from the Law Society and that such conduct is deserving of sanction.

3. On December 19, 2023, the Hearing Committee (Committee) convened a Hearing into the conduct of Shane Smith, based on the above citations.
4. A Statement of Facts and Admissions of Guilt (Agreed Statement) was entered as an Exhibit. The LSA did not call any evidence on citations 1 and 5 at the Hearing.
5. After reviewing all of the evidence and exhibits, including the Agreed Statement, and Hearing the testimony and arguments of the LSA and Mr. Smith, for the reasons set out below, the Committee finds Mr. Smith guilty of conduct deserving sanction on five citations, being citations 2, 3, 4, 6 and 7, pursuant to section 71 of the *Legal Profession Act (Act)*.
6. The Committee also finds that the joint submission on sanction is appropriate and a two-week suspension and payment of \$4,500.00 in costs is ordered. Although the Committee has serious concerns about the length of the suspension, the length of the suspension does not meet the high threshold, as set out in *R v Anthony-Cook*, 2016 SCC 43 (*Anthony-Cook*), to reject the joint submission on sanction in this case.

7. The Committee expressed significant concerns about Mr. Smith's governability and is satisfied that those comments will be taken into consideration by the LSA should Mr. Smith ever apply for reinstatement to the LSA.
8. In addition, pursuant to section 72(2) of the *Act*, the Committee orders costs in the amount of \$4,500.00.

### **Preliminary Matters**

9. Jurisdiction was established by the Letter of Appointment and Notice to Attend (Exhibits 1 and 2). There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Smith's conduct proceeded.
10. Mr. Smith confirmed he was aware that he was entitled to have counsel present but indicated he was self-represented.
11. No witnesses were called at the Hearing.

### **Background**

12. Mr. Smith was admitted as a member of the LSA on September 25, 2006. His practice focused primarily on immigration law.
13. Following the administrative suspension for the non-payment of Mr. Smith's active fees from June 3, 2018, Mr. Smith changed his status to "Inactive/Non-Practising" on August 30, 2018.
14. He was suspended again on March 15, 2019 for non-payment of his inactive fees. Mr. Smith is currently an administratively suspended member of the LSA.
15. Mr. Smith did not have any previous discipline record with the LSA.
16. Following the issuance of the seven citations by the Conduct Committee, Mr. Smith failed to attend three out of the four original Pre-Hearing Conferences in this matter. After the three failed attendances, LSA counsel served Mr. Smith with a Notice to Admit Facts and Exhibits.
17. This matter then went to a Hearing in December 2020, but the Committee adjourned and denied the LSA's application for deemed admissions.
18. Following the adjournment, Mr. Smith attended two further Pre-Hearing Conferences. Mr. Smith and LSA counsel worked towards the Agreed Statement which is dated September 21, 2023.

## **Agreed Statement of Facts and Admissions of Guilt**

19. By agreement, LSA did not call any evidence on citations 1 and 5 at the Hearing.
20. The Agreed Statement is approved as being in an acceptable form pursuant to section 60 of the *Act*. The Agreed Statement is appended to this decision as Schedule 1.
21. An admission in the acceptable form is deemed to be a finding that the admitted conduct is conduct serving of sanction. Accordingly, the Committee found Mr. Smith to be guilty of conduct deserving of sanction in accordance with section 60 of the *Act* with respect to five citations, citations 2, 3, 4, 6 and 7, as follows:
  2. Mr. Smith failed to serve his clients F.L. and R.L. by not finalizing the Applications, not responding to communications from them in a timely way and failing to transfer their file in a timely and orderly manner.
  3. Mr. Smith failed to repay all money owing to his clients, F.L. and R.L., as a result of a review or assessment of his accounts as soon as was practicable.
  4. Mr. Smith failed to reply to communications from the LSA in a timely way or at all in CO20181259.
  6. Mr. Smith failed to reply to communications from the LSA in a timely way or at all in CO20191038.
  7. Mr. Smith failed to reply to communications from the LSA in a timely way or at all in CO20191683.

## **Complaint #2: Citations 2, 3 and 4**

22. On June 22, 2018, the LSA received a complaint from Mr. Smith's clients, F.L. and R.L., alleging that he failed to submit immigration applications that he was instructed to complete. Mr. Smith admitted that although he understood the urgency of the clients' visa extension/restoration application for the guardianship of their grandson, Mr. Smith did not file the application before the deadline of September 7, 2017. This was partially due to delay in obtaining information from the clients.
23. Thereafter, Mr. Smith was instructed to file a permanent residence application for the grandson on humanitarian and compassionate grounds. Although the application was close to being finalized in March 2018, the application was not completed by Mr. Smith by the intended submission date of April 2018.

24. On February 24, 2018, Mr. Smith was instructed to provide the clients with a copy of a document needed to proceed with an application to renew the grandson's passport. Mr. Smith failed to provide any of the requested documentation.
25. On March 16, 2018, a representative of the adoption council requested documentation from Mr. Smith for the grandson's passport renewal. Mr. Smith failed to provide any of the requested documentation.
26. Mr. Smith then wrote to the clients on June 8, 2018, that he would be leaving the practice of law as of June 30, 2018. The clients confirmed that they wanted their file transferred to another lawyer as the file work needed to be completed as soon as possible. Mr. Smith failed to respond to the clients, did not transfer their file, and did not assist them with retaining new counsel. Mr. Smith returned the file materials to the clients via email.
27. The clients were unaware until this time that Mr. Smith had not submitted either of the applications. Mr. Smith never advised them that he had not submitted the applications. Upon this discovery, the clients and the adoption council wrote repeatedly to Mr. Smith. Mr. Smith did not respond to them.
28. The clients applied to have Mr. Smith's accounts reviewed. The Review Officer held that there was "not a lot of work product" in the file and "of the work product that is here... I'm not sure if it's useful." The Review Officer reduced the fees accordingly. Mr. Smith only repaid the unused retainer to the clients. Mr. Smith failed to repay the remaining amounts owing pursuant to the Review Officer's order.
29. Mr. Smith appealed the Review Officer's decision to the Court of Queen's Bench of Alberta. The appeal was dismissed with costs by Justice Shelley on December 21, 2018.
30. In the investigation of the complaint, Mr. Smith failed to respond to three emails/letters and three voicemails from the LSA.

### **Complaint #3: Citation 6**

31. On July 16, 2019, the LSA received a complaint from Mr. Smith's client, S.G., who retained him to assist with an immigration matter, alleging that Mr. Smith failed to provide the services for which he was retained, did not transfer the file to another lawyer, and did not return the retainer.
32. In the investigation of the complaint, Mr. Smith failed to respond to the complaint, and in doing so, failed to respond to three emails/letters from the LSA.

#### **Complaint #4: Citation 7**

33. On November 27, 2019, the LSA received a complaint from Mr. Smith's client, L.M., who retained him to assist with an immigration matter, alleging that Mr. Smith failed to provide the services for which he was retained and did not return the retainer.
34. In the investigation of the complaint, Mr. Smith failed to respond to the complaint, and in doing so, failed to respond to three emails/letters from the LSA.

#### **Analysis and Decision on Sanction**

35. Given the Committee's approval of the Agreed Statement and deemed finding that the admitted conduct is conduct serving of sanction, the focus of the Hearing and the Committee's deliberations were on the appropriate sanction.
36. The joint submission on sanction made by the LSA and Mr. Smith is as follows: a two-week suspension and payment of costs in the amount of \$4,500.00. While subject to deference, discussed in detail below, LSA counsel and Mr. Smith understood that the Committee is not bound by any joint submission on sanction.
37. Based on the Agreed Statement, the Committee had serious concerns about the length of the suspension proposed. The Committee was very concerned about Mr. Smith not attending the Review Officer hearing in-person and the inability to contact him to have him return for Justice Shelley's decision. Further, the Committee was troubled by Mr. Smith's failure to attend LSA Pre-Hearing Conferences, his demeanor at the Hearing itself and his inadequate responses to the Committee's questions.
38. Mr. Smith was late in attending the Hearing and initially refused to be present on camera. When Mr. Smith appeared on camera at the Hearing, he displayed a cavalier attitude in both the informality of his dress as well as his limited and unprepared oral submissions and reluctant responses. This left the Committee with the impression that Mr. Smith did not take the LSA's conduct processes seriously. This is of particular concern given that Mr. Smith admitted that he repeatedly failed to reply to communications from the LSA in a timely way or at all.
39. As a result of the Committee's expressed concerns about the length of the suspension proposed and Mr. Smith's governability should he ever apply for reinstatement to the LSA, it heard further oral testimony from Mr. Smith.
40. Mr. Smith did not make any expression of remorse for his actions at the Hearing and simply stated that he was attending the Hearing, that he had signed the Agreed Statement and he had nothing further to say.

41. In the Agreed Statement, Mr. Smith partially blamed his failure to submit the applications for his clients, F.L. and R.L., on the delay in obtaining information from them. Mr. Smith repeated this sentiment in his submissions at the Hearing. In doing so, Mr. Smith did not display the insight expected from a member following the admissions of guilt for his failure to serve his clients. This was particularly concerning to the Committee further considering the comments made by the Review Officer and Justice Shelley regarding the lack of work Mr. Smith performed for these clients.
42. Mr. Smith admits in the Agreed Statement that his failings to his clients were due to the fact that he “was in the midst of moving and other life stressors”. The Committee gained very little insight into why Mr. Smith failed his clients as he did and why he continually failed to respond to his clients and the LSA thereafter. The Committee gave Mr. Smith ample opportunity to expand on the mitigating factors in this case. The most Mr. Smith was willing to advise the Committee was that he was under considerable financial stress at the time because immigration law was no longer a financially viable area of practice. Mr. Smith did clarify, however, that if he had had the funds to pay the amount set out in the Review Officer’s order award in full to his clients at the time, he would have paid it.
43. Mr. Smith gave no indication to the Committee that he ever wanted to practice as a lawyer again. Mr. Smith has been administratively suspended for about five years and appears to have moved on to other business endeavours. Mr. Smith made clear at the Hearing that he wanted to “get on with life”.
44. Finally, it was concerning to the Committee that Mr. Smith was unfamiliar with the practice management work of the LSA. This issue was raised as a question by the Committee for the LSA counsel regarding whether Mr. Smith would have to undertake work with Practice Review prior to reinstatement. As Mr. Smith has previously undergone a period of involvement with Practice Review, the Committee expected he would know what Practice Review was and have gained certain insights from it. The Committee found it troubling that this was not the case.
45. The Committee heard from the LSA counsel that a Practice Review referral would be highly likely in this case should Mr. Smith apply for reinstatement in the future, as Mr. Smith has been suspended for five years. It is the Committee’s expectation that Mr. Smith would be referred to Practice Review should he ever apply for reinstatement.
46. The Pre-Hearing and Hearing Guideline (Guideline) sets out a number of general factors to be taken into account in determining an appropriate sanction. The LSA counsel’s oral submissions followed the Guideline in presenting the aggravating and mitigating factors, which led to the joint submission on sanction of a two week suspension in this case:

- 1) Mr. Smith has no prior disciplinary record with the LSA.

- 2) Mr. Smith's conduct was serious and repeated. His conduct in failing to respond to the LSA involves serious questions of governability.
  - 3) Mr. Smith was suspended during the period of time he repeatedly failed to respond to the LSA.
  - 4) Ultimately, the level of harm to the clients was low. While there was delay in F.L. and R.L.'s applications, it was confirmed that this delay did not have any serious consequences for them. The ultimate harm to the clients was in the category of hassle and frustration.
  - 5) Similarly, the failure to pay the full amount of the Review Officer's award to the clients is at the low end of the spectrum for financial misconduct. It is neither a trust fund issue nor misappropriation. The full amount was then ultimately paid to the clients.
  - 6) While Mr. Smith did not admit his misconduct and guilt at an early stage nor did he initially cooperate fully, he did ultimately work with the LSA to agree to the Statement of Admitted Facts and Admissions of Guilt.
47. The Committee expressed that to the above list, it would add the aggravating factors as set out in paragraphs 37 to 44 above. The aggravating factors are serious and related to questions about Mr. Smith's governability.
48. The Committee is bound by the law set out in *Anthony-Cook* regarding the deference owed to a joint submission on sanction:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56, when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".



[34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.

49. The Supreme Court of Canada held that joint submissions on sanction are not sacrosanct but are entitled to significant deference pursuant to a stringent public interest test.
50. Decisions of prior hearing committees are not binding on this Committee. However, the hearing committee decisions presented by Mr. Smith and the LSA were helpful to provide a spectrum of review for the public interest test. It is important that the decisions of hearing committees be consistent as a matter of fairness and predictability. The analogous decisions were presented as a temperature spectrum.
51. On the too hot end of the spectrum were the *Law Society of Alberta v. Kobylnyk*, 2019 ABLs 19 [*Kobylnyk*] and *Law Society of Alberta v. Spencer*, 2010 ABLs 24 [*Spencer*] decisions. *Kobylnyk* involved similar citations of the failure to take timely action and respond as in this case. The distinguishing aggravating factors were, however, signing a court order without instructions and trust accounting issues. Mr. Kobylnyk received a two-month suspension and a referral to practice management. In *Spencer*, the member never responded to the LSA and did not even appear at the hearing. *Spencer* was sanctioned with a three-month suspension and full costs.
52. On the too cold end of the spectrum were the *Law Society of Alberta v. Shanks*, 2013 ABLs 21 [*Shanks*] and *Law Society of Alberta v. Ayers*, 2018 ABLs 30 [*Ayers*] decisions. The citations in *Shanks* are analogous to those in this case, although *Shanks* only involved two failures to respond to the LSA, while Mr. Smith is being sanctioned for three failures to respond. In *Shanks*, the member was also much quicker to cooperate with the LSA and to admit guilt than Mr. Smith. Mr. Shanks received a reprimand and a fine. In *Ayers*, the citations were less severe than those against Mr. Smith, but one did involve the lack of payment of a retainer. Mr. Ayers was significantly more cooperative than Mr. Smith and received a reprimand and a fine.
53. The only decision presented as “warm”, meaning the most analogous to Mr. Smith’s citations for sanction, was *Law Society of Alberta v. Mirasty*, [2016] L.S.D.D. No. 109 [*Mirasty*]. In *Mirasty*, the member failed to follow a court order and failed to respond to the LSA. *Mirasty* involved more contested matters than before this Committee. The

failure to follow a court order was presented by the LSA as more severe than the failures to Mr. Smith's clients in this case. Unlike Mr. Smith, however, Mr. Mirasty failed to be candid to the LSA, which is a serious integrity issue. Mr. Mirasty received a 45 day suspension plus costs and a referral to practice review upon reinstatement.

54. The Committee finds that the failure to follow a court order in *Mirasty* is directly analogous to Mr. Smith's failure to follow the Review Officer's order in the payment to his clients. Both Mr. Mirasty and Mr. Smith displayed similar troubling cavalier attitudes to the court system and the LSA processes. These are similar to the governability concerns that the Committee has in relation to Mr. Smith.
55. Given the aggravating factors in this case, the Committee is of the view that Mr. Smith's sanction should fall closer to the 45 day range in *Mirasty* than the 14 day (two week) range for suspension. However, the Committee is satisfied that the joint submission of a two-week suspension does fall within the reasonable range and would not cause an informed and reasonable public to lose confidence or is otherwise contrary to public interest.
56. The Committee's view is that the two week suspension is at the lowest possible end of the reasonable range in this case. But for the joint submission on sanction and the very high threshold set out in *Anthony-Cook*, the Committee would have imposed a longer suspension.
57. While the Committee maintains its serious concerns about Mr. Smith's governability should he ever apply for reinstatement to the LSA, the two-week suspension is not "unhinged" and does not meet the "undeniably high threshold" for rejecting the joint submission.

### **Concluding Matters**

58. The Committee finds Mr. Smith guilty of conduct deserving sanction on five citations, being citations 2, 3, 4, 6 and 7. The Committee agrees that the joint submission is the appropriate sanction and a two-week suspension, to commence August 1, 2024. In addition, the Committee orders costs in the amount of \$4,500.00 which are to be paid in full by August 1, 2025.
59. A Notice to the Profession pursuant to section 85 of the *Act* is required in the circumstances of a suspension and thus is ordered by the Committee.
60. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Smith will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated July 22, 2024.

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Erin Runnalls

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Robert Philp, KC

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Catherine Workun, KC