

**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 JOHNY FAUL
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Stacy Petriuk, QC – Chair
Grace Brittain – Adjudicator
Anthony Young, QC – Adjudicator

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Dib Aytenfisu – Counsel for Johnny Faul
Peter Northcott – Counsel for Johnny Faul

Hearing Dates

October 13, 2021
October 19, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Introduction

1. The following citation was directed to hearing by the Conduct Committee Panel on May 18, 2021:
 1. It is alleged that the conduct of Johnny H. Faul in relation to his guilty plea to the criminal charge of assault, for which he was granted a conditional discharge, harms the standing of the legal profession and that such conduct is deserving of sanction.
2. The hearing into Mr. Faul's conduct took place over two days on October 13 and October 19, 2021. The Hearing Committee (Committee) heard from two witnesses, Mr. Faul and his former principal. The Committee caucused and provided a ruling on the citation shortly thereafter, advising that written reasons would follow. These are those reasons.
3. In respect of the merits of the citation, the Committee finds Mr. Faul guilty of conduct deserving of sanction. A hearing on sanction is scheduled for May 26 and 27, 2022.

Preliminary Matters

4. There were no objections to the constitution of the Committee or its jurisdiction.

Private Hearing Considerations

5. Counsel for Mr. Faul requested a partial private hearing with respect to the exhibits attached to Exhibit 5 which is the Statement of Admitted Facts and Exhibits (LSA Agreed Statement Facts), in the agreed to exhibit book (Agreed Exhibit Book) tendered at the hearing, and also Exhibits 6 and 7, given the publication ban of the criminal proceedings and the highly sensitive and personal information relating to a third party. Counsel for the LSA consented to this request. The Committee accepts the partial private hearing with respect to all exhibits attached to Exhibit 5 and also Exhibits 6 and 7. Exhibit 5 itself, being the LSA Agreed Statement of Facts, will remain a publicly available record, with appropriate redactions.
6. The Committee then raised further private hearing considerations regarding the oral hearing portion of the hearing. Given the highly sensitive and personal information relating to a third party, the Committee was concerned that the third person could be inadvertently referred to by her real initials or her full name. Given the live nature of the hearing and the human error that could occur, the Committee raised the idea of a partial private hearing: private witness testimony and submissions of the parties. The Committee asked counsel for submissions on this point. The Committee was concerned with protecting the identity of the third party and noted the difficulty with doing so given the discussion around the exhibits and nature of the testimony. More specifically, the Committee recognized the logistical issues in trying to exclude members of the public for portions of the testimony or submissions.
7. Counsel for Mr. Faul indicated that he would consent to a partially private hearing with respect to the oral hearing. Counsel for the LSA raised concerns regarding transparency, that hearings are open to the public by default, and that publication of the hearing operates as a deterrent.
8. The Committee then ordered further a partial private hearing and noted that in doing so it had considered the principles of transparency and accountability. The Committee further contemplated whether a partially private hearing was necessary to prevent serious risk to an important interest, and whether alternative measures would be sufficient.
9. The Committee found that there was a real and substantial risk to an important interest, which was supported by the evidence. It would be necessary during the hearing to hear evidence of a sensitive and confidential nature regarding a third party. The fact that there was a publication ban of the criminal proceedings was also a relevant factor for the Committee. This type of publication ban is directed at “any information that could identify the victim or a witness”.
10. The Committee understands that the default is that hearings are public to ensure transparency and accountability (paragraphs 134(a)-(e) of the LSA Pre-Hearing and Hearing Guideline). This concern must be balanced against the concern with respect to confidential and sensitive information of a third party. The Committee did not find that a partially private hearing would have a negative impact on the ability of the profession to self-regulate. On the contrary, these safeguards may have the opposite effect and

encourage people to come forward. General deterrence is an important factor, and the Committee confirmed on the record that the Committee's written decision would be publicly available. Great care has been taken in writing this decision to protect the identity of the third party.

11. The effectiveness and efficiency of the hearing process would be impacted by hearing evidence and submissions in a hearing attended by members of the public. It would be difficult to enforce. Finally, it must be noted that the partial private hearing ruling was not made to protect Mr. Faul, rather the third party.

Facts and Background

12. Mr. Faul is a Student-at-Law. He began articling with a Calgary law firm in June 2019.
13. A month or so prior to that, he met [RL] through a dating app. They texted a bit before meeting in person for a date in May 2019. They went on a couple of dates before deciding not to date, but to remain friends. During this time, Mr. Faul said they texted and hung out once or twice per week. [RL] was a university student at the time. Through the course of this friendship, Mr. Faul learned many intimate details of [RL]. For example, in a text she told him that she had [medical conditions]. She indicated to him that she had been [...]. [...] Mr. Faul responded to this information by stating "I know I will never be a man to cheat on you, abuse you or rape you".
14. [RL] also, after requests by Mr. Faul, sent some photos of herself. Although in some she was not clothed and in some she had underwear on, no picture exposed private parts of her body. The pictures were accompanied by a text that indicated that [RL] struggled with her body image.
15. On January 31, 2020, Mr. Faul was arrested and charged with sexual assault pursuant to section 271 of the Criminal Code (R.S.C., 1985, c. C-46) (CC). On February 3, 2020, Mr. Faul reported to the LSA, through his counsel, that he had been charged with sexual assault.
16. At the criminal proceedings, an agreed statement of facts was entered (Criminal Agreed Statement of Facts) and read into the record in support of Mr. Faul's guilty plea to the charge of assault. It has been redacted to remove personal or identifying information and reads as follows:

On December 8, 2019, the accused John Faul picked up [RL] in his vehicle at her residence at approximately 8:24 pm where the two returned to his residence [ADDRESS] to hang out. They [sic] two had met online, initially gone on a few dates, and then decided to just be friends as [RL] expressed she was not interested in a relationship with him. They talked regularly and were friends from July 2019 to December 2019, the night of the incident. The accused was in a relationship with another woman at the time of this incident, who both parties referred to as his "girlfriend."

The parties were drinking alcohol over the evening. [RL] began to feel weak and tired, so much so she laid down on the couch. Mr. Faul attended to [RL] on the couch by touching her body, kissing her and confessing his love and desire to have sex with her. Several times, [RL] tried to push him away, and stated she

wasn't interested and reminded him he had a girlfriend. Mr. Faul responded with "I don't care" and continued with persistence.

Eventually, [RL] moved to the bedroom where she assumed she could fall asleep alone. Mr. Faul crawled into bed with her. [RL] awoke to inappropriate touching. She was scared and began to cry, at which time Mr. Faul stopped and left the bedroom. [RL] left Mr. Faul's home and walked home. The parties then decided to mutually cease communication the next morning.

17. On December 7, 2020, Mr. Faul entered a guilty plea to simple assault, pursuant to section 266 of the CC. Mr. Faul was granted an 18-month conditional discharge with terms and conditions. The terms included non-contact with [RL], counselling, 75 hours of community service and a letter of apology.
18. Mr. Faul had counsel at all relevant times during both the criminal and LSA matter.

Testimony and Evidence Received at the Hearing

19. As referenced earlier, an Agreed to Exhibit Book was entered which included the LSA Agreed Statement of Facts. The LSA Agreed Statement of Facts referenced and included the Criminal Agreed Statement of Facts and both were admitted for the truth of their contents. In the LSA Agreed Statement of Facts, Mr. Faul admitted the following facts:
 - 4) I met [RL] on a dating app in April 2019. We started our relationship with a view to dating and went on three dates together, but decided to become friends in May 2019 after [RL] told me that she was not interested in a romantic relationship. A copy of the text messages exchanged between [RL] and myself from April to July 2019 are included as Exhibit 1.
 - 5) On December 8, 2019, [RL] was present at my residence in Calgary. The events of that date are described in further detail in this Statement of Admitted Facts and were the basis for the criminal charge against me.
 - 6) On December 9, a series of cellphone text messages were exchanged between myself and [RL]. A copy of this series of text messages is included as Exhibit 2.
 - 7) On January 31st, 2020, I was arrested and charged with sexual assault. My arrest was by appointment and I was released on the same date on an undertaking with conditions.
 - 8) On February 3rd, 2020, I reported to the Law Society of Alberta through my counsel that I had been charged.
 - 9) On December 7th, 2020, the Crown I entered a guilty plea to assault contrary to section 266 of the Criminal Code of Canada on which the Crown proceeded summarily in the Provincial Court of Alberta in Calgary.

- 10) In support of my guilty plea to assault, an agreed statement of facts was read into the court record. This agreed statement of facts is admitted for the truth of its contents and is included as Exhibit 3.
 - 11) After entering a guilty plea, I was granted a conditional discharge. The terms and conditions of the conditional discharge are included as Exhibit 4.
 - 12) On January 20th, 2021, I was interviewed by an investigator for the Law Society of Alberta, Mr. [JD]. A transcript of this interview is included as Exhibit 5.
 - 13) On January 25th, 2021, I was interviewed again by Mr. [JD]. A transcript of this interview is included as Exhibit 6.
 - 14) On February 17th, 2021, I was interviewed again by Mr. [JD]. A transcript of this interview is included as Exhibit 7.
20. In addition to the above facts, during his testimony at the hearing Mr. Faul indicated that he had performed oral sex on [RL].
 21. The LSA Agreed Statement of Facts did not contain an admission of guilt to the citation and, as such, the Committee was required to make a ruling on guilt. Also included in the Agreed Exhibit Book were several pages of text messages, the Probation Order, three transcripts of Mr. Faul's interviews with an LSA investigator and a letter of apology written by Mr. Faul. At the hearing, an additional exhibit was entered, a letter from the Crown Prosecutor on the criminal matter.
 22. During Mr. Faul's testimony regarding the specific events of the night of December 8, 2019, and while going through the Criminal Agreed Statement of Facts, LSA counsel objected. After submissions, the Committee ruled that:
 - 1) Mr. Faul cannot comment on [RL]'s feelings or thoughts.
 - 2) Any testimony of Mr. Faul which contradicts either the LSA Agreed Statement of Facts or the Criminal Agreed Statement of Facts, as both have been entered for the truth of their contents, would be disregarded and not considered by the Committee.
 - 3) Mr. Faul can provide non-contradictory evidence to potentially augment the facts contained in the LSA Agreed Statement of Facts or Criminal Agreed Statement of Facts, however the Committee would determine the weight to be given to the evidence.
 23. It should be noted that Mr. Faul attempted to provide evidence in areas which the Committee considers to be contrary to the Criminal Agreed Statements of Facts. Specifically:
 - (a) He thought his actions vis-à-vis [RL] on December 8, 2019, were done with consent. While he appreciated that [RL] did not hold that view, Mr. Faul felt he could hold that view. These diverging views were not mutually exclusive. It

should be noted that it is also contradictory to the second LSA interview (Exhibit 5.6, page 9, lines 3-20 and page 10, lines 2-10).

- (b) Mr. Faul indicated that after he said, "I don't care", he said, "kiss me back".
 - (c) Mr. Faul indicated that [RL] lifted her hips to help remove her pants.
 - (d) Mr. Faul added facts that [RL] changed from a sweater to a t-shirt in front of him and exposed a side-view of her breasts.
 - (e) [RL] asked to go to the bedroom.
 - (f) Mr. Faul asked if he should keep going.
 - (g) Mr. Faul gave different timing in his testimony.
24. The Committee disregarded Mr. Faul's testimony on the above points, as these were contrary to the evidence admitted for the truth of its contents, specifically the Criminal Agreed Statement of Facts. The Committee also noted that with respect to the new additional facts that he provided at the hearing, Mr. Faul was given opportunities by the LSA investigator to provide additional information and provided none of what he then provided in his testimony at the hearing (Exhibit 5.7, pages 27-31).
25. At the time of the hearing, Mr. Faul indicated he had completed the terms of his conditional discharge, save for the passage of time. The community service was modified due to the restrictions of COVID-19. Mr. Faul was terminated from his original articles approximately one month after he was criminally charged. He worked at a different law firm from May 2021 to October 2021. At the time of this hearing, he was continuing his articles with a sole practitioner (his mother). Mr. Faul indicated in his testimony that he had never had someone come to him and say that he had done bad work. He was aware of some concerns at his original articling law firm.
26. At this point, LSA counsel requested an adjournment because she wanted to consider the evidence given by Mr. Faul and whether she needed to call rebuttal evidence. She was concerned with respect to the divergence between the Criminal Agreed Statement of Facts and Mr. Faul's testimony at the hearing. Mr. Faul's counsel took a contrary view and opposed the application for the adjournment.
27. The Committee considered the submissions by both.
28. Given the previous ruling of the Committee, the LSA Agreed Statement of Facts and the Criminal Agreed Statement of Facts, the Committee determined that Mr. Faul could provide additional, non-contradictory evidence. The weight to be given to this would be determined by the Committee. The LSA was aware that Mr. Faul was going to testify. Mr. Faul had not admitted guilt. The Committee considered the prejudice to Mr. Faul and further delays. The Committee had no concerns with continuing and ensuring a fair hearing. The adjournment application was not granted.

Additional Witness Testimony

29. The only other witness to testify was DH, Mr. Faul's former principal. DH provided evidence that there had been performance issues, and Mr. Faul was provided with negative feedback regarding his substantive work product. To be fair to Mr. Faul, DH had advised him that it was very likely he would not be hired back. In addition to DH raising performance issues with Mr. Faul, other lawyers at the firm raised it with Mr. Faul directly as well.
30. Initially, Mr. Faul was placed on unpaid leave and then was terminated from his articling position.
31. In his first LSA interview, Mr. Faul was asked if there were performance issues at his firm and he said "no" (exhibit 5.5, page 33, lines 5-32).

LSA Counsel Submissions

32. LSA counsel submitted that the citation was made out and that evidence showed the conduct surrounding the guilty plea of Mr. Faul harmed the standing of the legal profession and the conduct is deserving of sanction. LSA counsel submitted that there were two particulars with respect to this.
33. The first is that the assault Mr. Faul committed is conduct deserving of sanction. LSA counsel relied on the Criminal Agreed Statement of Facts. LSA counsel submitted that facts Mr. Faul testified to, which were contradictory to the Criminal Agreed Statement of Facts, should not be accepted. In support of this, LSA counsel cited *Law Society of Alberta v. Rauf*, 2021 ABLs 24, at paragraphs 16 and 17. LSA counsel also referred to the differing versions of the performance reviews by Mr. Faul and his principal. LSA counsel submitted that Mr. Faul failed to be candid with the LSA on performance issues during his interviews and in his testimony at the hearing. In support of this, LSA counsel cited *Law Society of Alberta v. Sharma*, 2021 ABLs 2.
34. LSA counsel referred to section 49(1) of the *Legal Profession Act (Act)* and indicated that the sexual nature of the offence harmed the standing of the legal profession. LSA counsel also referred to the Code of Conduct (Code), specifically Rule 2.1-1. LSA counsel also referred to cases where all forms of sexual offences amounted to conduct deserving of sanction (*Law Society of Alberta v. Nguyen*, 2019 ABLs 1, *Law Society of Upper Canada v. G.N.*, 2004 ONLSHP 14, *Law Society of Upper Canada v. G.N.*, 2005 ONLSAP 1, *Law Society of Alberta v. Fairclough*, 2014 ABLs 46 and *Law Society of Upper Canada v. Coccimiglio*, [1991] L.S.D.D. No. 103).
35. With respect to the second, LSA counsel submitted that Mr. Faul failed to be candid and complete with the LSA regarding the details of the assault and the performance issues at his original articling firm. In support of this, LSA counsel cited Rule 7.1-1 of the Code. Failing to be candid with the LSA undermines the LSA's regulatory function and must be denounced.
36. LSA counsel submitted that section 606(1.1) of the CC states that the Court may accept a guilty plea only if it is satisfied that:
 - (b) The accused understands that the plea is an admission of the essential elements of the offence; and ...

(c) The facts support the charge.

37. LSA counsel submitted that it is unclear whether the Court would accept Mr. Faul's plea based on Mr. Faul's additional facts testified to. LSA counsel also submitted that the letter of apology entered as an exhibit does not appear to take responsibility for his actions.

Mr. Faul's Counsel Submissions

38. Mr. Faul's counsel addressed the issue of Mr. Faul failing to be candid head-on. Mr. Faul's counsel submitted that Mr. Faul has consistently made two assertions, which were alleged by LSA counsel to be incompatible and contradictory.
39. One, Mr. Faul has consistently said that the Criminal Agreed Statement of Facts is true; and two, Mr. Faul consistently thought the encounter was consensual. Mr. Faul's counsel submitted that the LSA investigator and LSA counsel does not think that one and two can both be true.
40. Mr. Faul's counsel submitted that Mr. Faul has been consistent that the Criminal Agreed Statement of Facts is true. However, Mr. Faul believes that the encounter was consensual. Mr. Faul accepts that [RL] does not believe the encounter was consensual. That does not change what Mr. Faul believes.
41. Mr. Faul's counsel submitted that the text messages entered as an agreed exhibit supported Mr. Faul's belief that the encounter was consensual. Mr. Faul's counsel also submitted that the Criminal Agreed Statement of Facts does not contain all the facts, but it does contain the necessary facts for establishing the elements of the offence. Mr. Faul is not importing elements of consent into the Criminal Agreed Statement of Facts. Mr. Faul's counsel submitted that the additional facts are not contradictory, just additional. Mr. Faul's counsel submitted that there is no real inconsistency between Mr. Faul's and his principal's testimony. Mr. Faul was not terminated for performance issues. Mr. Faul's counsel submitted that if the Committee accepts that Mr. Faul thought it was a consensual encounter, his conduct does not harm the standing of the legal profession and is not deserving of sanction. Mr. Faul has no criminal record, no conviction, just a rehabilitative sentence and a period of probation, including counselling, and Mr. Faul has complied.

Analysis and Decision

42. After reviewing the evidence, hearing testimony from Mr. Faul and DH, and the submissions of the LSA and counsel for Mr. Faul, for the reasons set out below, the Committee finds Mr. Faul guilty of conduct deserving of sanction on the sole citation pursuant to section 71 of the *Act*.
43. Section 49(1) of the *Act* states that:

For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- (a) is incompatible with the best interests of the public or of the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

44. The preface to the Code states:

Two fundamental principles underlie this Code and are implicit throughout its provisions. First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach.

45. Rule 2.1-1 of the Code states:

2.1 Integrity

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

46. The Commentary accompanying the above standard states:

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

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action....

47. Rule 7.1-1 of the Code states that "[a] lawyer must reply promptly and completely to any communication from the Society. This and the above sections of the Code are engaged given the facts surrounding the assault itself and of failing to be candid with the LSA.

48. The best evidence of the relevant facts is contained both in the Criminal Agreed Statement of Facts and in the LSA Agreed Statement of Facts. Given that both were entered for the truth of their contents, any facts that were inconsistent with either was given no weight by the Committee. The facts contained in the Criminal Agreed Statement of Facts make it clear that there was an absence of consent when the parties

were on Mr. Faul's couch and when [RL] awoke to inappropriate touching in Mr. Faul's bedroom. The absence of consent is an essential element of the assault.

49. Any attempt to import elements of consent into the parties' interactions should be given no weight. It should also be noted that Mr. Faul made no argument to resile or withdraw from the Criminal Agreed Statement of Facts. Since Mr. Faul has not asked to withdraw it, he cannot set up competing contradictory evidence in an attempt to disprove the admission. Additionally, it was recognized that Mr. Faul provided more facts at the hearing that were not contradictory to either the Criminal Agreed Statement of Facts or the LSA Agreed Statement of Facts.
50. Further, the Committee found the aggravating factor that, prior to the assault, [RL] shared very personal information with Mr. Faul, which would indicate that she was a very vulnerable individual.
51. The attempt to provide additional, contradictory facts also indicates a lack of candour with the LSA investigator and in the three interviews that were held. In addition to the additional facts which contradict the Criminal Agreed Statement of Facts, these facts were not provided to the LSA investigator, even when asked if all relevant facts had been provided. Additionally, the Committee noted that the letter of apology entered as Exhibit 6 was not much of an apology at all.
52. Finally, the Committee considered the evidence of DH and the parts of evidence that contradicts Mr. Faul, specifically with respect to performance issues. This contradiction further supports a lack of candor shown by Mr. Faul.
53. Case law indicates that sexual assault has been considered conduct deserving of sanction. In *Law Society of Alberta v. Sparling*, 2014 ABLS 11, the member admitted to conduct deserving of sanction wherein he hugged a potential client during an initial client meeting. In *Law Society of Alberta v. Nguyen*, 2019 ABLS 1, the member agreed that he had committed conduct deserving of sanction when he communicated with his client in a manner that was offensive or otherwise inconsistent with the proper tone of professional communication and asked inappropriate questions regarding his client's private relations with her wife.
54. Not being candid with the LSA has also been found to be an aggravating circumstance in the context of other LSA hearings. In *Law Society of Alberta v. Fairclough*, 2014 ABLS 46, a Student-at-Law faced two citations and applied to resign under section 61, effectively resulting in a disbarment. Specifically, intoxicated after a firm event, Mr. Fairclough took a photograph of a female coworker. He did not seek the coworker's consent and the photograph was unauthorized. It was also inappropriate. The photograph exposed private parts of the coworker's body (paragraph 15). After taking the photograph, Mr. Fairclough circulated it to two male coworkers and sent a text message falsely claiming to have had sexual relations with the coworker (paragraph 16). At paragraph 19, the resignation panel stated, "In sum, at each stage of the various investigations Mr. Fairclough did not tell the truth to his firm, to the independent investigators, or to the LSA. The truth eventually came out as a result of a thorough investigation, and faced with the truth, Mr. Fairclough admitted his misconduct."
55. The oversight of integrity by the LSA of lawyers in Alberta begins when they are students-at-law. Mr. Faul has acted without integrity. Mr. Faul's guilty plea to the

criminal charges and his lack of candour in the process has harmed the legal profession and its reputation.

56. The Committee find that the citation has been proven on a balance of probabilities and that Mr. Faul's conduct is deserving of sanction.

Concluding matters

57. As indicated above, Mr. Faul's sanction hearing is to take place on May 26 and May 27, 2022, and at that time the Committee will consider submissions by both Mr. Faul's counsel and the LSA with respect to the appropriate sanction.
58. The transcripts of this merits phase of the hearing, exhibits attached to Exhibit 5 and Exhibits 6 and 7 shall remain private but remaining exhibits, 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. Faul will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3) of the Rules of the LSA) and to protect the confidential information of a personal nature of third parties.

Dated April 8, 2022.

Stacy Petriuk, QC – Chair

Grace Brittain

Anthony Young, QC