

**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 LINDSAY DOUCET
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Cal Johnson, KC – Chair and Bencher
Jim Lutz, KC – Bencher
Martha Miller – Public Adjudicator

Appearances

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

Hearing Dates

February 21, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations (Citations) were directed to hearing (Hearing) by a Conduct Committee Panel on September 14, 2021:
 - 1) It is alleged that Lindsay P. Doucet engaged in conduct that impaired her capacity to provide competent services to clients and that such conduct is deserving of sanction.
 - 2) It is alleged that Lindsay P. Doucet encouraged her client to engage in illegal conduct and that such conduct is deserving of sanction.
 - 3) It is alleged that Lindsay P. Doucet acted without integrity by accepting payment directly from clients without documenting receipt or reporting payment to her employer and that such conduct is deserving of sanction.
2. Ms. Doucet was admitted as a member of the LSA in January of 2016 and practiced thereafter primarily in criminal and family law with a small Calgary law firm. Ms. Doucet

had struggled with substance use disorder at various times during her life, including during her articles. The substance use disorder became particularly problematic in mid-2019 and ultimately resulted in her seeking treatment in a Calgary facility in March of 2020. This had negative effects on her practice leading to the client service failures outlined in Citation 1, the ethical violations outlined in Citation 2 and the trust safety and integrity issues outlined in Citation 3.

3. On February 26, 2020, Ms. Doucet's employer advised her that her files would be redistributed to other members at the firm and Ms. Doucet elected to become an Inactive Member of the LSA on February 27, 2020 and remained as such at the time of the Hearing.
4. On December 10, 2022, Ms. Doucet executed a Statement of Admitted Facts and Admission of Guilt (Statement), in which she admitted the Citations and that her conduct was deserving of sanction.
5. On February 21, 2023, the Hearing Committee (Committee) convened the Hearing into the conduct of Ms. Doucet based on the Citations. The Committee found that the Statement was in appropriate and acceptable form and therefore concluded that the conduct described in the Citations was conduct deserving of sanction pursuant to the *Legal Profession Act (Act)*. Accordingly, the primary issues before the Committee were the appropriate sanction and the question of a referral to the Minister of Justice and Solicitor General (Referral).
6. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Ms. Doucet, for the reasons set out below, the Committee concludes that the appropriate sanction is a 7-month suspension in accordance with section 72 of the *Act*.
7. In addition, pursuant to section 72(2) of the *Act*, the Committee orders costs of the LSA's investigation and this Hearing in the amount of \$7,500.00 to be paid by way of quarterly instalments of \$1,250.00 over a period of 18 months, commencing upon Ms. Doucet's reinstatement as a member of the LSA.

Preliminary Matters

8. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested.

Agreed Statement of Facts/Background

9. In the Statement, Ms. Doucet acknowledged that, beginning in 2019, her substance use disorder seriously affected her performance for her clients, resulting in missed or rescheduled appointments, appearances and meetings and an increasing reliance on

other members of her firm to cover for these failings. This pattern of behaviour came to the attention of colleagues and clients, and concerns from her employer as to her health and ability to serve her clients.

10. A LSA investigator conducted two separate interviews with Ms. Doucet in February of 2020, approximately one week apart. In the first interview, the investigator asked specifically about possible substance use disorder and ethical breaches, and Ms. Doucet was less than candid and dismissed them. However, in the second interview she was much more forthcoming and did admit much of the behaviours which are the subject of the Citations.

Citation 1

11. In the Statement, Ms. Doucet admitted to and detailed a number of specific instances of client service failures in which she:
 - a) failed to attend Court on multiple occasions resulting in a warrant being issued for the arrest of a client on more than one occasion;
 - b) failed to meet Court filing deadlines;
 - c) failed to return calls and advance her client's matters;
 - d) had to ask agents or other members of her firm to fill in on a last-minute basis due to her failure to attend to matters on a timely basis; and
 - e) failed to address complaints made to her firm in relation to her performance.
12. These various performance issues all related to the matters summarized by Citation 1 and as admitted to by Ms. Doucet.
13. During the course of the LSA investigation, Ms. Doucet was less than candid in the first instance in terms of responding to questions from the investigator concerning possible substance use disorder. It was only at the time of a second interview that she was forthright about her substance use disorder and related ethical violations.

Citation 2

14. At a time when Ms. Doucet was acting for a client in relation to a criminal matter, she became aware that the client had been prescribed painkillers that were controlled substances for the purposes of the *Controlled Drugs and Substances Act (CDSA)*. At this same time, Ms. Doucet was using opiate medications but struggling to find sources to obtain them. She contacted the client and professed to needing painkillers for a hand injury and asked the client to obtain some for her. Both during the investigation and in her response letter to the LSA investigation, Ms. Doucet indicated that she could not

recall a transaction during which the painkillers were provided but did concede that he may have provided them to her. At the Hearing, she attempted to explain and qualify this admission. However, upon further questioning by the Committee, it became clear that this related to the outstanding issue of the Referral and was not meant to reject or qualify her admissions in the Statement.

15. At one point Ms. Doucet advised that client in an email that if he could provide her with some painkillers that she would take it off his retainer, adding "LOL". At the Hearing Ms. Doucet indicated that this was only said in jest and that she never did affect that exchange.

Citation 3

16. In her Statement, Ms. Doucet acknowledged having significant financial troubles as a result of her substance use disorder. On three separate occasions she accepted payments from clients without following the accepted practice with her firm, which was to immediately deposit them to the firm's general account.
17. At the Hearing, Ms. Doucet explained that the agreed practice with her firm was that she would split her billings on a percentage basis and would receive payments at the end of the month reflecting her share. Due to her substance use disorder, she felt unable to wait for that month-end distribution and exercised poor judgment in retaining the funds for her own account.
18. At the Hearing, Ms. Doucet also explained that when her substance use disorder, service issues and these retained payments came to light, she suffered penalties imposed by the firm. The penalties were in excess of these amounts, to compensate her firm and certain firm members for the problems she had caused. In her response letter to the LSA, Ms. Doucet admitted that her actions were a result of desperation and poor judgment, and admitted to failing to report the cash receipts, defrauding her employer.

Analysis and Decision on Sanction

LSA Submissions

19. LSA Counsel and Ms. Doucet advised the Committee of a joint submission on sanction for consideration by the Committee. The joint submission was for a suspension of 7 months and costs in the amount of \$7,500.00.

Citation 1

20. LSA Counsel provided a number of cases to the Committee to provide an understanding as to the methodology by which the 7-month suspension had been arrived at. In a broad sense, LSA Counsel indicated that the principal factors at play in this situation were:

- a) the mitigating factors surrounding Ms. Doucet's rehabilitation efforts; and
 - b) the aggravating factors including particularly some level of what was described as misappropriation by Ms. Doucet and potential involvement of a client in a criminal matter.
21. In relation to Citation 1 and the various client service issues, LSA Counsel referred the Committee to *Law Society of Alberta v. Juneja, 2014 ABLs 32*. In that case, Mr. Juneja was found guilty of two citations of failing to serve his clients in a conscientious, diligent and efficient manner. One citation involved a criminal matter where the client was not advised of required court appearances by the Mr. Juneja and warrants for his arrest for failure to appear were issued. With respect to the other citation, Mr. Juneja similarly failed to advise of trial dates, failed to attend court, did not advise the client of warrants issued for his arrest and failed to respond to inquiries as to the status of the matters. The lawyer had been sanctioned on two previous occasions by the LSA for misconduct.
22. In *Juneja*, there was evidence the member suffered from alcohol abuse and had sought counselling. The hearing committee in that case did not find integrity or governance breaches by the member. That committee considered a range of sanctions from a reprimand to a suspension of four months. It found that the alcohol addiction rehabilitation was not a mitigating factor and that his practice was not impacted by it. In the result, a suspension of two months was ordered.
23. LSA Counsel noted that while the suspension was much less than proposed here, *Juneja* involved only client service issues and not the more serious issues engaged by Citations 2 and 3. However, the case was put forward as a case that was comparable in terms of client service issues.

Citation 2

24. LSA Counsel acknowledged that comparable cases were hard to find in relation to this Citation. The conduct of Ms. Doucet was proposed as a significant aggravating factor for this Citation. The first case referred to was *Law Society of Alberta v. Morales 2018 ABLs 23*. Mr. Morales faced eight separate citations for conduct that included driving under the influence of alcohol, failing to deal with the resulting charges and then improperly procuring a replacement driver's license when he knew his license was suspended in another jurisdiction. The failure to serve citations related to not being honest with the client and misleading the client with relation to a Power of Attorney, failing to account to a client and misappropriating funds and assisting a party at a regulatory hearing while he was suspended from practice. LSA Counsel conceded that *Morales* lacked the same level of cooperation that was extended by Ms. Doucet.
25. In *Morales*, a joint submission proposed an 18-month suspension and \$8,000.00 in costs. Similarities to the present case included no prior disciplinary record, a personal

and professional collapse and an extended period out of practice due to an administrative suspension. Differences included dishonesty in dealings with the LSA, resulting in additional citations, lapses in the commitment to recovery, concerns of that committee about setbacks on the road to recovery, and the serious issue of practicing while suspended. LSA Counsel submitted that these serious differentiating factors were determinative in the much longer suspension ordered.

Citation 3

26. LSA Counsel first referenced *Nova Scotia Barristers' Society v. Van Feggelen, 2010 NSBS 2*. In that case the member misappropriated approximately \$30,000.00 from his trust account and which was then used for payment of personal and business expenses. A family loan was subsequently obtained to reimburse the trust account.
27. Mr. Van Feggelen admitted that he suffered from depression and anxiety and had sought medical treatment for his condition. There were a number of other charges in addition to the misappropriation. He had initially been suspended from practice as a result of the misappropriation but was reinstated subject to a number of restrictions. At the hearing, the Nova Scotia Barristers' Society took the position that misappropriation always requires disbarment. The majority decision held that Mr. Van Feggelen had discharged the heavy onus of showing the presence of exceptional circumstances in terms of his mental illness and a number of mitigating factors. The majority noted Mr. Van Feggelen had already been suspended from practice for nine months and felt no further suspension was warranted. His ability to practice for a period of two years was then subject to a number of stringent conditions.
28. LSA Counsel emphasized the similarity of misappropriation with mitigating mental health issues and for the position that misappropriation does not always necessarily require disbarment.
29. The next case submitted was *Law Society of Upper Canada v. Harold George Elston, 2010 ONLSHP 0082*. Mr. Elston made online transfers of trust funds on seven occasions for a total misappropriation of approximately \$64,000.00. He admitted his wrongdoing and reimbursed the trust account on a timely basis. He was also cooperative in the investigation and admitted to financial difficulties and that his personal life and health were chaotic at the time. Medical evidence indicated a bipolar disorder. He admitted to alcohol abuse and had voluntarily entered a residential treatment program. His conduct subsequent to the events led the hearing committee to indicate that he had dealt responsibly with the matter. He was suspended for four months and was subject to a number of practice restrictions.
30. LSA Counsel highlighted the similar circumstances in terms of taking responsibility, seeking assistance and cooperation with the LSA. The original longer nine month suspension was suggested as indicative of the much larger misappropriation in the first

instance, but it was also noted that Mr. Elston was only subject to the single citation relating to that misappropriation.

31. The fourth case cited by LSA Counsel was a Law Society of British Columbia (LSBC) matter, *Ahuja (Re) 2021 LSBC 44*. Mr. Ahuja had committed multiple instances of misconduct while in active addiction, including failing to attend applications, conversion of client trust funds to his own use on four occasions totaling \$16,000.00, trust accounting failures and failing to deposit funds received from a client into a trust account. Counsel for the LSBC sought to characterize the taking of client funds as "misappropriation" rather than "conversion of client funds to his own personal use while in active addiction", as a differentiating factor in the determination of sanction. The hearing panel did not agree and favoured that alternate characterization. The LSBC sought an eight month suspension.
32. The hearing panel characterized Mr. Ahuja's conduct as "extremely grave" and that, although only 37 years old, he had a substantial professional misconduct record. However, in mitigation, they also noted that Mr. Ahuja had completed a residential rehabilitation program, made restitution to all of his victims, submitted to voluntary addiction monitoring and testing, and had cooperated throughout the investigation. After an extensive review of a number of cases, the hearing panel indicated that the appropriate range of suspension would be six to nine months. They ordered a seven month suspension, having reduced the LSBC's recommendation by taking into account a two month aggregate suspension ordered for two prior citations.
33. The final case referred to was *Schauble (Re), 2009 LSBC 32, Schauble (Re), 2009 LSBC 11*. The member was a 20-year lawyer with no prior disciplinary record who was found to have kept the fees from files for himself rather than split them with his firm and that he did not honestly believe he was entitled to do so. The LSBC sought a suspension of from six to nine months. The hearing panel indicated that misappropriation of funds from a firm was less serious than misappropriation of a client's funds and ordered a three month suspension.

Analysis

34. The Committee was appreciative of the comprehensive case review and analysis provided by LSA Counsel in support of the joint submission on sanction. In determining the appropriateness of the joint submission of a 7-month suspension, the Committee was mindful of the LSA's Pre-Hearing and Hearing Guideline (Guideline).
35. The Guideline emphasizes that, "[t]he purpose of disciplining lawyers is to protect the public interest and maintain public confidence in the legal profession..." Sanction orders should therefore seek to achieve both specific and general deterrence, ensure that the LSA "can effectively govern its members" and "denounce the misconduct at issue."

36. The Guideline also directs hearing committees to consider whether the lawyer acted "intentionally, knowingly, recklessly or negligently", and indicates that relevant aggravating and mitigating factors may include:
- a) the lawyer's prior discipline record (although the amount of time that has passed since any prior misconduct is relevant);
 - b) the length of time the lawyer has been in practice;
 - c) whether the lawyer has acknowledged the wrongdoing and expressed remorse;
 - d) the extent to which the lawyer cooperated during the LSA's conduct process;
 - e) any "medical, mental health, substance abuse or other personal circumstances that impacted the lawyer's conduct"; and
 - f) any personal benefit realized by the lawyer from the misconduct.
37. The Committee considered that all of the above mitigating and aggravating factors were present as well as the significant factor of involving a client in a criminal matter. The Committee did struggle with the characterization of the failures relating to the fee splitting as misappropriation in light of the severity of misappropriation in other cases referenced.
38. In accordance with the Guideline, the Committee is required to give significant deference to a joint submission and the Guideline references the Supreme Court of Canada case of *R. v. Anthony-Cook*, 2015 BCCA 22, which outlined a test for assessing the acceptability of joint submissions in a criminal law context. That case proposed a "public interest test" whereby a judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or otherwise be contrary to the public interest. Engaging the public interest test requires considering the following issues:
- a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the criminal justice system?
 - b) Would the joint submission cause an informed and reasonable public to lose confidence in the institution of the courts?
 - c) Is the joint 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?

39. If a hearing committee finds that the test is met, it can reject the joint submission. The public interest test has been widely adopted by professional discipline tribunals across Canada. The case law confirms that the test is appropriate and should be applied in LSA conduct proceedings.
40. After reviewing the cases referenced by LSA Counsel, the submissions of LSA Counsel and a very brief submission by Ms. Doucet, the Committee determined that the deference requirements of the Guideline were sufficient to direct the Committee to accept the joint submission as reasonable and in the public interest.
41. Accordingly, the Committee ordered:
 - a) a suspension of seven months to commence from the date of this Hearing;
 - b) payment of costs in the amount of \$7,500.00 to be paid in quarterly installments of \$1,250.00 per installment over an 18-month period commencing upon Ms. Doucet's reinstatement.

The Referral

42. The one outstanding and unresolved issue between the LSA and Ms. Doucet related to whether a referral to the Minister of Justice and Solicitor General was required in light of the handling of client funds without accounting to her firm, and the involving of her client in a solicitation of a controlled substance.
43. LSA Counsel proposed that a referral was necessary on both grounds. He first cited the provisions of sections 330 (Theft by a person required to account) and 332 (Fraudulent taking or conversion) of the *Criminal Code of Canada*, RSC 1985 c C-46 (*Criminal Code*) in relation to the handling of the funds provided by clients, without a timely deposit to the trust account of Ms. Doucet's firm, in accordance with their agreed practice. LSA Counsel cited the provisions of section 4 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 in relation to her seeking to obtain a controlled substance in a manner which involved her client in a criminal activity.
44. LSA Counsel referenced section 78(6) of the *Act*. That section provides:

Notwithstanding the subsections (1) to (4), if following a hearing under this Division, the Hearing Committee or the panel of Benchers is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Hearing Committee or the panel, as the case may be, shall forthwith direct the Executive

Director to send a copy of the hearing record to the Minister of Justice and the Solicitor General. [Emphasis added]

45. LSA Counsel indicated that it is only required that the Committee be of the view that there are reasonable and probable grounds that a criminal offence had been committed and that triggers a mandatory referral. In that sense he viewed this requirement of the *Act* as a "notice provision" which did not require the Committee to get into pragmatic concerns with respect to the offences or indulge in any significant review of the evidence.
46. LSA Counsel also noted that the Committee is dealing with a lesser standard of a balance of probabilities and not a criminal standard of a reasonable doubt. In that sense he described the test as a belief standard tied to a notice only provision resulting in a relatively low standard required for a referral.
47. His principal case reference was to *LSA v. Amantea 2020 ABLs 14*. In that case, Mr. Amantea admitted guilt to two citations involving swearing an affidavit of execution when he had not in fact witnessed the signature and acting in a conflict of interest. It was the first citation that engaged the referral question, and on which the parties made submissions to the hearing committee involved.
48. Counsel for Mr. Amantea presented a number of cases from the LSA and other law societies involving swearing false affidavits where no reference was made and argued that there was no intent to deceive, that the member actually believed they had been properly signed and that it was a matter of competence, not integrity. LSA Counsel in that case argued that only one of the past decisions had engaged in a discussion of the relevant issues and argued that intent was not the question, but rather whether the member knowingly swore a false affidavit. That hearing committee held that, while the member had no intent to deceive and knowingly authenticate a false signature, the facts supported the inference that he had the intent to deceive and that he intended that his false affidavits be relied upon by others.
49. The Committee initially had some difficulty with the following wording in *Amantea* at paragraph 76: "The Committee's decision is based upon its conclusion that "the *Act* permits us no discretion in these circumstances". Also, at paragraph 77, that hearing committee stated that it "was unanimous in its view that if the *Act* gave [them] any discretion in the determination (such as that given to the Conduct Committee in subsection 78(5) with the use of the word "may " instead of the word "shall" as in subsection 78(6)), [they] would not direct a referral in the circumstances of this case." Thus, with reluctance, a referral was made by the hearing committee in *Amantea*.
50. During the Hearing, there was some debate about the *Amantea* decision wording about affording no discretion to a hearing committee. However, ultimately, the Committee is of the view that the *Act* did require it to engage in a substantive consideration of the issues in assessing the reasonable and probable grounds and that it retained a significant

element of discretion on its assessment and application of that part of the test. It is when a hearing committee determines there are “reasonable and probable grounds to believe that the member has committed a criminal offence” that there is no discretion.

51. LSA Counsel argued that the theft provisions of the *Criminal Code* are quite malleable and that the directing of the funds by Ms. Doucet triggered reasonable and probable grounds, and that the possession of the controlled substance as admitted by Ms. Doucet was similarly sufficient.
52. Ms. Doucet argued that her admissions on the controlled substances were made under difficult circumstances where her concerns were getting on with the process so that she could be reinstated and that the facts in and of themselves did not make out the offence of trafficking. As for the issue of misappropriation, she argued that this was a particularly pejorative term in the circumstances and that since she was not taking from the clients, and the clients had no knowledge of the taking, that this differentiated her situation from some of the other cases referenced.
53. After some questioning by the Committee, LSA Counsel agreed that the use of the term “misappropriation” in this circumstance was probably not the appropriate term. The Committee considered it to be something lesser and more in the nature of a "conversion" along the lines of what was discussed in *Ahuja*. Ms. Doucet argued that because she had taken from her firm and not her client that this somehow took the matter out of the hands of the Committee and that it lacked some sort of jurisdiction to deal with that as a matter for referral. The Committee did not accept that characterization.
54. The Committee struggled with the respective arguments of both parties. The Committee did not agree that it had no alternative here but to make a referral based on a very low standard. Rather, the Committee felt that it had a mandated duty to engage substantively with the reasonable and probable grounds test and look at the specifics of each basis for referral and make independent determinations.
55. On the issue of the possession of a controlled substance and seeking to obtain a controlled substance, the Committee listened carefully to the submissions of Ms. Doucet and the evidence submitted and concluded that there were real and significant doubts as to whether the substance was actually provided for the purposes of section 4(1) of the CDSA and whether the limited facts provided would meet the requirements for either offence under section 4(1). Accordingly, the Committee was of the view that it could not conclude that the requisite test of reasonable and probable grounds that the offences had been committed had been satisfied.
56. As for the taking of client funds, the Committee reviewed both sections 330 and 332 of the *Criminal Code* and concluded that the facts as presented raised only a reasonable and probable belief that an offence had been committed under the lesser standards imposed by section 330 in respect of money taken on account.

57. Accordingly, the Committee ordered that a referral to the Minister of Justice and Solicitor General be made only in respect of Citation 3 and limited to the provisions of section 330 of the *Criminal Code*.

Concluding Matters

58. The Committee ordered, pursuant to section 72 of the *Act* that Ms. Doucet:

- a) Is suspended for a 7-month period commencing February 21, 2023; and
- b) Must pay \$7,500.00 in costs to the LSA in quarterly installments of \$1,250.00 over an 18-month period commencing upon her reinstatement.

59. Notice to the Profession pursuant to section 85 of the *Act* is required in the circumstances of a suspension and such Notice was issued on February 22, 2023.

60. A referral to Minister of Justice and Solicitor General is to be made in respect of the conduct related to Citation 3.

61. 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 Ms. Doucet will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated April 17, 2023

Cal Johnson, KC – Chair and Bencher

Jim Lutz, KC - Bencher

Martha Miller