

**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, KC – Chair
Grace Brittain - Adjudicator
Anthony Young, KC - Adjudicator

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Alain Hepner, KC – Counsel for Johnny Faul

Hearing Dates

November 29, 2022

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION PHASE

Introduction

1. In a decision dated April 8, 2022, this Hearing Committee (Committee) found that Johnny Faul had engaged in conduct deserving of sanction in relation to his guilty plea to the criminal charge of assault, for which he was granted a conditional discharge (Merits Decision). Following a hearing on sanction (Sanction Hearing), for the reasons that follow, the Committee finds that the proper sanction for Mr. Faul's conduct is deregistration.

Preliminary Matters

2. As noted in the Merits Decision, there were no objections to the constitution of the Committee or its jurisdiction.
3. The Sanction Hearing was held on November 29, 2022. In addition to submissions by both counsel, there were several witnesses.

Evidence and Witness Testimony

4. At the Sanction Hearing, many letters of reference from personal friends and colleagues were provided to the Committee. In addition, there were letters from two registered psychologists. The personal letters and letters from colleagues, for the most part, were supportive of Mr. Faul. Many of the individuals appeared as witnesses and upon cross-examination, some found Mr. Faul's behaviour troubling. Mr. Faul's mother also testified.
5. The following letters were entered as exhibits:
 - a) Letter from Dr. PB, PhD, LLB, Registered Psychologist (Alberta), dated June 13, 2022;
 - b) Letter from Dr. NP, MS, PhD, Registered Psychologist, dated October 10, 2021;
 - c) Letter from JN, Barrister and Solicitor, dated May 30, 2022;
 - d) Letter from KR, dated June 18, 2022;
 - e) Letter from DK, Barrister and Solicitor, dated September 29, 2022;
 - f) Letter from CA, dated May 31, 2022;
 - g) Letter from BG, dated June 24, 2022;
 - h) Letter from HE, Barrister and Solicitor, dated June 22, 2022;
 - i) Letter from JF (brother of Johny Faul), dated October 8, 2021;
 - j) Letter from MV, dated October 11, 2021;
 - k) Letter from EC, dated June 16, 2022;
 - l) Letter from RP, dated June 16, 2022; and
 - m) Letter from AF, dated June 3, 2022.

Dr. PB

6. The report of Dr. PB was particularly helpful to the Committee. He provided his report at the request of Mr. Faul's counsel.

7. Dr. PB met with Mr. Faul on three occasions, for approximately one hour each time. Dr. PB was qualified as a clinical psychologist and a forensic psychologist. Dr. PB addressed the concern that Mr. Faul had gone outside the LSA Agreed Statement of Facts as detailed in the Merits Decision. Dr. PB attributed this to cognitive distortion. According to Dr. PB, “cognitive distortions are the excuse that we give ourselves for crossing the line, doing something that we otherwise know we should not be doing”.
8. Dr. PB further opined that Mr. Faul had more room for improvement and that he could benefit from counselling specific to the issues around sexual offending and relapse prevention focussed treatment. It would further Mr. Faul’s understanding about how he got himself into this situation and the things he could do to avoid getting himself into this situation in the future.
9. Dr. PB assessed Mr. Faul’s risk of re-offending using the Static-99 measure. Mr. Faul scored 2. Individuals with a score of 2 showed sexual recidivism rates of 9% and 13% at 5 and 10-year follow up points. In his report, Dr. PB stated:

This is not to suggest that Mr. Faul’s risk for sexual reoffence can be so precisely defined. Factors such as meaningful participation in treatment (that leads to behavioural change), the absence of attitudes that condone offending, and the presence of positive supports (e.g., his mother) may serve to reduce his risk below those values, while factors such as episodic alcohol use, poor stress management and depression could serve to increase his risk beyond those values.

10. According to Dr. PB, Mr. Faul is in the early to middle stages of having a relapse prevention plan.

Mr. Faul

11. Mr. Faul prepared a new letter of apology for the Sanction Hearing, which was entered as an exhibit and provided to the Committee. Mr. Faul read the letter after being affirmed. In Mr. Faul’s letter, he stated:

I understand that the predicate event which gave rise to this hearing as a whole, is conduct unbecoming of anyone involved in the legal profession. I am deeply sorry that I found myself in a situation such as this unbecoming incident - one that would jeopardize the faith of the public in the legal profession. I know what I did on the night in December of 2019 was wrong.

...

Further to the Hearing Committee, while it was not my genuine intention to mislead or lack candor in our dealings, I do now wholeheartedly

understand how my testimony during the interviewing stage with Mr. Dooks, and at the October 2021 hearing, indicates otherwise. I am very, very remorseful for my lack of candor.

For me, to import extra evidence above the Agreed Statement of Facts from the predicate proceeding was wrong. As those who regulate our profession, I failed you in this regard, and for that I am very humbly sorry. I acted without integrity and without candor, and I do understand the severity of my behaviour and I can never do this again.

12. Following this, Mr. Faul took questions from the Committee.

Purpose of Sanction

13. The LSA Pre-Hearing and Hearing Guideline, at paragraphs 185 to 187, sets out the purpose of sanction as follows:

The fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.

Other purposes of sanctioning include:

- a. specific deterrence of the lawyer;
- b. where appropriate to protect the public, preventing the lawyer from practising law through disbarment or suspension;
- c. general deterrence of other lawyers;
- d. ensuring the Law Society can effectively govern its members; and
- e. denunciation of the misconduct.

Sanctioning must be purposeful. The factors that relate most closely to the fundamental purposes outlined above carry more weight than others.

Submissions by LSA

14. It is the LSA's position that Mr. Faul's articles should be terminated, and he should be deregistered. Mr. Faul's conduct raises issues of integrity, honesty, and governability. LSA Counsel pointed out that the testimony of Dr. PB noted that when he first met with

Mr. Faul, Mr. Faul clearly had cognitive distortions. This is not the level of rehabilitation that would be expected from a member or prospective member of the legal profession.

15. With respect to the balance of the witnesses, LSA Counsel indicated that character evidence is not much assistance because it can not speak to what the public thinks. At paragraph 16 of *Bolton v. The Law Society*, [1993] EWCA Civ 32, it states:

[...] It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem bis [*sic*] reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus, it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

16. Additionally, LSA Counsel argued that Mr. Faul's mother's testimony is not without its challenges as it is difficult for a mother to offer a completely neutral view of her son.
17. LSA Counsel also commented on Mr. Faul's most recent letter of apology. Specifically, she noted Mr. Faul's phrasing of "the situation he found himself in" to be problematic. Mr. Faul's criminal behaviour was not a situation that he found himself in. The letter also does not address Mr. Faul's lack of candor at his previous firm.
18. In terms of the appropriate sanction, LSA Counsel referred to the following cases.
19. *Law Society of Alberta v. Fairclough*, 2014 ABLS 46 involved a student-at-law who made an application to resign as a student-at-law during the course of conduct proceedings under section 61 of the *Legal Profession Act (Act)*. Mr. Fairclough, intoxicated after a firm event, took a photograph of a female coworker without seeking her consent. The photograph revealed body areas that are private. Mr. Fairclough sent the photograph to two male coworkers. In a text to one of the male coworkers, Mr. Fairclough claimed, falsely, that he was having sexual relations with his female coworker. Eventually, Mr.

Fairclough's firm had an independent organization investigate the events. A forensic investigation recovered the impugned photograph and documentation was sent to the LSA. 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 conduct. Mr. Fairclough's application to resign as a student-at-law pursuant to section 61 of the *Act* was accepted. When a member resigns under this section it is deemed to be a disbarment so in effect, for a student-at-law it would be a deemed deregistration.

20. In *Law Society of Alberta v. Hammoud*, 2014 ABL 30, an appeal panel upheld the hearing committee's finding that Mr. Hammoud had failed to be candid with the LSA and his conduct was unbecoming. Mr. Hammoud was deregistered.
21. In *Law Society of Alberta v. Ihensekhien-Eraga*, 2019 ABL 16, Ms. Eraga, a student-at-law, plagiarized a factum and then lied about it. Ms. Eraga was suspended for 12 months.
22. In *Law Society of Alberta v. Cattermole*, [2008] LSDD No. 168, Ms. Cattermole breached CPLED's professional integrity policy and lied about it. She received a reprimand but would have received a harsher penalty if she did not have extenuating personal circumstances, which included the sudden death of her father and pressure from her principal to complete the assignment on time.
23. In *Law Society of Alberta v. Sharma*, 2021 ABL 2, Mr. Sharma was found to have failed to be candid with his principal and the LSA regarding the amount of time left in his articles. An appeal panel set aside the deregistration ordered by the hearing committee and ordered Mr. Sharma to serve a suspension of one year plus a day. In this case, there were no criminal proceedings and no vulnerable victims.
24. LSA Counsel argued that the cases of *Law Society of Alberta v. Vanderleek*, 2014 ABL 19 and *Law Society of Alberta v. Nguyen*, 2019 ABL 1 can be distinguished because the facts are quite a bit different. Here, there was a violation of bodily integrity, and the criminal conduct was extremely serious. Mr. Faul departed from his criminal statement of facts, which was accepted as his admission of guilt. The LSA Counsel indicated that Mr. Faul had made self-protective choices and had not taken full accountability for his conduct.
25. LSA Counsel indicated that there must be a rehabilitation aspect, and Mr. Faul's attempts at rehabilitation had not been demonstrated. LSA counsel emphasized that deregistration was the only appropriate sanction, and that the *Act* prevents a member from seeking readmission for one year.

Submissions by Mr. Faul's Counsel

26. Mr. Faul's counsel argued that deregistration was not an option in light of the evidence. Mr. Faul's counsel submitted that the witnesses did not change their minds after providing letters on Mr. Faul's behalf. In addition, Mr. Faul was conditionally discharged and convicted of assault. He stated that there was no adjudication by the Court on sexual assault. Mr. Faul's counsel admitted that there is no question that Mr. Faul needs counselling and submitted that the testimony of Mr. Faul's mother speaks volumes to Mr. Faul's ability and desire to remain in the profession. Mr. Faul's counsel indicated that Mr. Faul should be given a substantial fine, or possibly a suspension or reprimand. He pointed to the cases of *Sharma* and *Ihensekhien-Eraga* there were lengthy suspensions.
27. In *R. v. Hayher*, 2005 ABPC 44, a law student was convicted of fraud over \$5,000.00 and is now a successful lawyer. Mr. Faul's counsel tried to draw an analogy between *Hayher* and Mr. Faul's case. However, the information with respect to the case is with respect to the criminal case only. It was noted by LSA Counsel that Mr. Hayher's call to the bar was delayed by four years.
28. Mr. Faul has no record and no history with the LSA. He is motivated. Mr. Faul's counsel suggested that this conduct does not call for deregistration, but perhaps a minimum of a \$5,000.00 fine and practice review, and perhaps a short period of suspension.

Analysis and Decision on Sanction

29. After reviewing all of the evidence and exhibits, hearing the testimony of several witnesses, listening to Mr. Faul's latest letter of apology and answers to the questions posed, hearing the arguments of LSA Counsel and counsel for Mr. Faul, considering the purposes of sanctioning and for the reasons set out below, the Committee has determined that the appropriate sanction is deregistration.
30. Sanctioning has many purposes as outlined above. However, one of the fundamental purposes of sanctioning is to protect the public's confidence in the integrity of the profession. It is essential to protect the public's confidence in the integrity of the profession as this is one of the primary mandates of the LSA. In order to do so, Mr. Faul's conduct must be denounced in the strongest possible terms. This necessarily means that deregistration is the only suitable sanction.
31. Another one of the purposes is denunciation of the misconduct. While the other purposes are important, these two factors most strongly resonate in Mr. Faul's matter.
32. The facts of Mr. Faul's misconduct, as outlined in the Merits Decision are serious. Mr. Faul's conduct on the night of December 8, 2019, and subsequently his lack of candor with the LSA, must be denounced in the strictest sense.

33. The Committee has reviewed the cases referred to by both LSA Counsel and counsel for Mr. Faul. The Committee finds that the cases referred to by counsel for Mr. Faul are distinguishable. Specifically, *Hayher* does not involve the conduct proceedings of the LSA so little can be taken from it. The case that seems to have the most in common with the facts of this matter is *Fairclough*. However, it appears that in *Fairclough*, the student-at-law was not charged criminally. In *Fairclough*, the student-at-law applied to be deregistered, and the application was successful. The case of *Nguyen* is distinguishable. In that case, Mr. Nguyen made inappropriate comments in an initial meeting with a potential client. For that, he entered into an agreed statement of facts and admission of guilt and a joint submission on sanction. The sanction consisted of a reprimand, a fine and costs. The fine could be used to pay for relevant continuing legal education courses. The facts are so distinguishable that the sanction in *Nguyen* provides no guidance in this matter.
34. Mr. Faul is fortunate to have many people who will provide him with letters of support and testify on his behalf. In addition to the cautions regarding this type of evidence as outlined in *Bolton*, not all of the testimony was unequivocally supportive. Specifically, EC resiled from some of her letter and BG clarified the limited nature of his letter and testimony. The testimony from Mr. Faul's mother must also be viewed with some caution for obvious reasons discussed above.
35. Lastly and importantly, the Committee found Dr. PB's letter and testimony compelling concerning Mr. Faul's divergence from the facts in the Merits Decision, his need for further counselling, and that Mr. Faul was at the early to middle stages of developing a relapse prevention plan. We interpret Dr. PB's opinion to indicate that while positive steps have been taken, Mr. Faul was not yet at a point where the Committee felt the public confidence can be determined to be restored.

Concluding Matters

36. In light of all the above, we find that deregistration is appropriate. Deregistration is effective immediately.
37. With respect to costs, LSA Counsel is directed to prepare a Statement of Costs and provide it to the Chair of the Committee within one week of the issuance of this decision for review and approval. The parties are invited to provide written submissions on costs within 30 days of the date of this decision.
38. A Notice to Profession will be issued, however the matter does not need to be referred to the Attorney General.
39. 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. Faul will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated April 3, 2023.

Stacy Petriuk, KC - Chair

Grace Brittain

Anthony Young, KC