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 ANDREW RICE
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Carsten Jensen, KC – Chair and Former Bencher
Barbara McKinley – Former Bencher
Catherine Workun, KC – Adjudicator

Appearances

Will Cascadden, KC – Counsel for the Law Society of Alberta (LSA)
Andrew Rice – Self-represented

Hearing Date

November 23, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Andrew S. Rice is an Alberta lawyer who was admitted to practice in 2010. For six years, ending in 2019, Mr. Rice practiced with a firm in Sherwood Park, where he believed he would be part of the firm's future succession planning. His relationship with the principals of the firm deteriorated and ultimately his employment was terminated.

2. Thereafter a complaint was made about Mr. Rice to the LSA by one of the partners of the firm, giving rise to these proceedings.

3. The following citations were directed to hearing by a Conduct Committee Panel on July 19, 2022:

    1) It is alleged that Andrew S. Rice failed to provide legal services to the standard of a competent lawyer, including performing all functions in a conscientious, competent, timely and diligent manner, and that such conduct is deserving of sanction;

    2) It is alleged that Andrew S. Rice failed to be honest and candid with one or more clients, about information that may have affected the interests of his clients, and that such conduct is deserving of sanction;

3) It is alleged that Andrew S. Rice brought the administration of justice into disrepute by asking S.M. for assistance with engaging in illegal conduct, and that such conduct is deserving of sanction;

4) It is alleged that Andrew S. Rice improperly managed funds held in trust, including by withdrawing funds without authority, and that such conduct is deserving of sanction; and

5) It is alleged that Andrew S. Rice breached Rule 119.21 of *The Rules of the Law Society of Alberta*, by withdrawing funds from trust prior to delivering Statements of Account to his clients, and that such conduct is deserving of sanction;

(the Citations).

4. The Citations address client service issues, honesty and integrity, the encouragement of illegal conduct, as well as the management of client trust funds. The Citations allege serious misconduct.

5. On November 23, 2023 the Hearing Committee (Committee) convened a hearing into Mr. Rice's conduct based on the Citations. The matter proceeded by way of a Statement of Admitted Facts and Admissions of Guilt (Statement), followed by joint submissions on sanction, all of which was ultimately accepted by the Committee.

6. After reviewing and accepting the Statement of Admitted Facts and Admissions of Guilt, and considering the joint submissions on sanction, and for the reasons outlined below, the Committee provided a brief oral decision, with written reasons to follow, as follows:

a. Mr. Rice is suspended from practice for five months, to start January 1, 2024;

b. Mr. Rice is ordered to pay $15,000.00 to the LSA in costs, due August 31, 2024;

c. The LSA is to issue a Notice to the Profession; and

d. No notice is directed to the Attorney General.

Preliminary Matters

7. There were no objections to the constitution of the Committee or its jurisdiction. A private hearing was not requested, and the matter proceeded as a public hearing into Mr. Rice's conduct.

8. During the course of the proceedings, it became clear that the specific reference in Citation 5 to Rule 119.21 of the Rules of the Law Society of Alberta (Rules) was incorrect. The Committee directed the amendment of that Citation, on the consent of the LSA and of Mr. Rice, to read as follows:

5) It is alleged that Andrew S. Rice breached the *Rules of the Law Society of Alberta* by withdrawing funds from trust prior to delivering Statements of Accounts to his clients, and that such conduct is deserving of sanction.

Agreed Statement of Facts and Admissions of Guilt / Background

9. The Statement outlines Mr. Rice's status as an active/practicing member of the LSA whose current practice focus is on corporate/commercial law, with an emphasis on wills and estates and real estate. During the time the Citations arose, his practice included some litigation matters.

10. Pursuant to section 60 of the *Legal Profession Act* (*Act*), such a Statement is not to be acted upon until it is found to be in an acceptable form, and after such a finding it is deemed for all purposes that each admission of guilt in the Statement is an admission that the conduct is conduct deserving of sanction.

11. To be in an acceptable form under section 60, the Statement must be voluntary, and offered by a lawyer who has capacity and understands the nature and consequences of the admissions. The Committee should show a high degree of deference to joint submissions made regarding the Statement, even where the admissions made will result in some citations being dismissed (which was not the case here). The Statement should be accepted unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.[1]

12. The public interest is paramount in this assessment – that includes an understanding that a Statement voluntarily advanced by a lawyer, and supported by the LSA, is one that likely reflects a realistic and negotiated balance of what the LSA reasonably expects to be able to prove in a fully contested hearing. The resolution of issues by agreement is to be encouraged. The Committee should not lightly second-guess such a Statement, while maintaining its important oversight role.

13. In this case, the Committee received the Statement and determined that it was in a form acceptable to the Committee, pursuant to section 60 of the *Act*. The Statement was made voluntarily, eliminated the need for a hearing on the merits, and contained robust admissions of guilt which flowed logically from the agreed facts. Accordingly, the admissions of guilt in the Statement were all accepted, and the admissions of guilt are therefore admissions that Mr. Rice's conduct is deserving of sanction.

14. The Citations arise from Mr. Rice's involvement with five clients, described in more detail in the Statement, and summarized below.

MTM

15. In 2014, Mr. Rice began acting as counsel for MTM, and in about 2017 he took on a potential breach of contract class action for this client against W.M., with the goal of negotiating a settlement prior to litigation if possible. Mr. Rice expected and was promised certain levels of support from his former firm with this file, which did not materialize.

16. Mr. Rice wrote to W.M. to advise he had been retained and to say that he had been instructed to propose a framework for negotiation and resolution prior to litigation if possible. He also wrote to various companies about potentially joining the proposed

[1] *Law Society of Alberta v. Pearson,* 2011 ABLS 17 *and Rault v. Law Society of Saskatchewan*, 2009 SKCA 81.

class action. W.M. eventually requested further information, and there were some communications with the client, but the matter stalled in Mr. Rice's office.

17. When MTM asked about progress in the matter and delay, Mr. Rice deflected blame on the "team", even though a team had not been assigned, and he said that a settlement framework was almost complete, which was untrue. He promised his client that certain steps would be completed by self-imposed deadlines, which he failed to meet. In various ways he repeatedly said that work was progressing when this was untrue.

18. Mr. Rice eventually delivered a draft settlement letter to MTM. He then sent a settlement letter to W.M., almost a year and a half after his last communication with them. W.M. asked for more information, and again Mr. Rice reported to his client referencing his non-existent team.

19. With respect to the MTM matter, Mr. Rice admitted:

    a. he failed to adequately respond to W.M.'s requests for information in a reasonable amount of time;

    b. he repeatedly set deadlines that he did not expect to meet, and failed to meet deadlines imposed;

    c. he made misleading statements to MTM about the status of their matter, and to deflect blame for delay; and

    d. he failed to keep my client informed, including about the members of the Firm working on their matter.

S.P.

20. Mr. Rice was corporate counsel for S.P., handling their day-to-day legal matters, while another law firm provided other corporate legal services.

21. In 2019 Mr. Rice was asked by S.P. to assist with several outstanding post-closing matters on a sale transaction, including the discharge of various liens registered with the Personal Property Registry (PPR). Mr. Rice was provided with the information and documentation necessary to handle the discharges by S.P.'s other law firm, who offered assistance if needed.

22. Mr. Rice did not ever attend to the discharges, notwithstanding several follow-ups by the other law firm, which follow-ups noted the urgency of the work Mr. Rice had been asked to do. Mr. Rice advised the client that the discharges had been sent for consent, which was untrue, and he advised the client that the registrations had been "bounced" at Land Titles, which was also untrue (and the work had nothing to do with the Land Titles office).

23. With respect to the S.P. matter, Mr. Rice admitted:

    a. he did not attend to the discharges promptly or at all;

b. he made misrepresentations about the status of his work, including by noting that the discharges had been sent “for consent as to form”; and

c. he did not respond to communications from [the other law firm].

S.G.

24. Mr. Rice acted for S.G. on various matters. In 2015 Mr. Rice was instructed by S.G. to receive funds from various parties purchasing shares in S.G. and/or purchasing lots in S.G.’s proposed property development in British Columbia. Lots were priced at $15,000.00 each, but investors who entered into subscription agreements for shares received a discount.

25. One of the investors was M.L., who wanted to purchase a specific lot. M.L. provided a cheque for $15,000.00 “Re: Private Sale – Lot 4 Funds in Trust”. He also provided a cheque for $10,000.00 “Re Shareholder Lots 8 & 9 – Funds in Trust”. This latter cheque was recorded by Mr. Rice on the client ledger for S.G. as “Equity Payment/ Shareholders Loan”, and was disbursed by Mr. Rice for S.G.’s corporate purposes, notwithstanding the “in trust” notation on the cheque.

26. M.L. followed up regarding his funds and demanded explanations. Mr. Rice replied that M.L.’s inquiries were creating tax issues and may put the property deal “at further risk at a critical juncture.” Mr. Rice did not refund the $10,000.00 to M.L., even after being instructed to do so by S.G., and eventually he used funds in trust to pay his firm’s accounts, including the two amounts held for M.L., and without being authorized to do so by M.L. In addition, Mr. Rice withdrew these funds from trust prior to delivering Statements of Account to S.G.

27. With respect to S.G., Mr. Rice admitted:

a. on July 26, 2018, he withdrew funds held in trust for the S.G./L Matter without instructions or authority to do so; and

b. he withdrew funds from trust prior to delivering Statements of Account to S.G., including on June 30, 2017, July 26, 2018, and April 3, 2019.

N.H.

28. In 2014 Mr. Rice was retained by N.H. in relation to a construction development project. After most of the work was complete, N.H. was in receivership. There were funds remaining in trust with Mr. Rice on two separate matters, and they remained there for several years – and ultimately were not needed to make claimants whole in the receivership process.

29. Subsequently, Mr. Rice made time entries in his accounting system for a two-year period, prepared a Statement of Account, and withdrew funds from trust to pay that account. Mr. Rice recalls discussing this with his client contact, but the Statement of Account was not provided to him before the withdrawal.

30. With respect to N.H., Mr. Rice admits that he withdrew funds from trust prior to delivering the N.H. Statement of Account to his client contact.

Corporate client/ President S.M.

31. Mr. Rice admitted that, on February 26, 2019, he engaged in a text message conversation with S.M., who was the President of a corporate client, as follows:

> Rice: hey…, Andrew here… mind if I ask an off the wall personal question? We do some agency work for local athletes and one of them had a need I don't know how to fill…
>
> S.M.: U lost me on that?
>
> Rice: was just explaining the question – one of our athletes was looking for some 'white' but I have no connections.
>
> So was curious if you had any connections I could use. would be a one time small amount thing.

32. Mr. Rice admitted he was referring to cocaine when he said "white" in this exchange.

33. In the Agreed Statement of Facts, Mr. Rice says he made up the story about athlete clients to see whether S.M. was using cocaine, and he says he had no intention of purchasing cocaine for himself or for anyone else. He says he had "deeply held concerns" about his work for this client and the mental health of S.M., and he engaged in this "ruse" in some way to protect his firm from "repercussions".

34. With respect to S.M., Mr. Rice admits that he asked for assistance with engaging in illegal conduct – namely to sell, transfer or transport a Schedule 1 drug under the *Controlled Drugs and Substances Act* – and that this conduct put the reputation of the profession at risk.

The Citations

35. With respect to Citation 1, Mr. Rice admitted that he failed to provide legal services to the standard of a competent lawyer, including performing all functions in a conscientious, competent, timely and diligent manner by, with respect to both MTM and S.P.:

    a. Failing to complete work in a timely way, or at all; and

    b. Failing to keep my clients informed.

36. With respect to Citation 2, Mr. Rice admitted that he failed to be honest and candid with his clients MTM and S.P. about information that may have affected their interests by:

    a. With respect to MTM, by

        i. Misleading them about the resources and experience being deployed on their potential class action, which prevented them (and other potential class action participants) from making an informed choice about their representation,

        ii. Making misrepresentations about the status of their matter; and

iii. Setting deadlines that I did not intend to meet regarding his work on this matter; and

b. With respect to S.P., by

i. Blaming a junior lawyer for the delay in attending to their work; and

ii. Making misrepresentations about the status of their work.

37. With respect to Citation 3, Mr. Rice admitted that he brought the administration of justice into disrepute by asking S.M. for assistance with engaging in illegal conduct.

38. With respect to Citation 4, Mr. Rice admitted that he improperly managed funds held in trust, including by withdrawing funds without authority, by using funds from the S.G./L Matter which were to be held in trust, to pay legal fees.

39. With respect to Citation 5 (as amended), Mr. Rice admitted that he breached the Rules by withdrawing funds from trust prior to delivering Statements of Account to his clients, including several occasions on the S.G. and N.H. matters.

Submissions of the LSA on Sanction

40. The LSA advised that, pursuant to a joint submission on sanction agreed with Mr. Rice, it was seeking a five-month suspension from practice, commencing January 1, 2024, and running to May 31, 2024, with a requirement that Mr. Rice pay the LSA costs in the amount of $15,000.00 by August 31, 2024.

41. The LSA's position was that this sanction is in line with the relevant cases, and with the facts here, taking into account that Mr. Rice has no prior discipline history, that he cooperated with the LSA's investigation, and taking into account the admissions of guilt and joint submissions.

42. The LSA pointed to several cases in support of the joint submission on sanction, including *Law Society of Alberta v. McKay*, 2016 ABLS 34. In *McKay* the lawyer faced 17 citations (15 of which proceeded to a hearing) arising from very poor client service, described as follows:

> 16. …Mr. McKay failed to provide conscientious, diligent and efficient service to his clients in four complaints, misled clients about the progress of their matters in three of the complaints, failed in two complaints to respond in a timely manner to clients and to lawyers, in one complaint breached trust conditions imposed by another lawyer, and in every complaint failed to respond to inquiries by the LSA.
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> 17. Clients experienced the frustration and distress of finding the work promised was left undone and in two cases clients lost their opportunity for redress as an appeal was struck and a hearing abandoned. In one complaint, a failure to file caveats promptly avoided serious and irreparable harm by dint only of good luck.

> 18. Time and time again important matters that should have been dealt with promptly and effectively were not. Clients' reasonable expectations of competent and timely legal service were not met…

43. In *McKay*, the lawyer was suspended for four months, and ordered to pay costs. The LSA submitted that *McKay* is quite comparable in terms of the client service issues. However, the element of non-cooperation with the investigation present in the *McKay* case is not present here, while it is noted that Mr. Rice admits that he asked for assistance with engaging in quite serious illegal conduct involving his client S.M.

44. The LSA also pointed to the decision in *Law Society of Alberta v Nguyen*, 2021 ABLS 23. In that case the citations dealt with four serious breaches of the LSA's accounting rules, failures to be candid about those breaches, and assisting a client with an improper purpose associated with the Maintenance Enforcement Program. In *Nguyen*, the lawyer was noted to have a disciplinary record. In the end result, the lawyer was suspended for five months, and ordered to pay costs.

45. To provide context, the LSA also pointed to several cases involving more serious conduct, with longer periods of suspension being imposed.

46. The LSA encouraged the Committee to accept the joint submission on sanction, noting the comments in paragraph 13 of the *McKay* decision:

> 13. The Hearing Committee is to give serious consideration of joint submissions and, while not bound by such, ought to reject joint submissions only where found unfit or contrary to the public interest (*R*. v. *Thachuk*, 2001 ABCA 243 and *Law Society* v. *Pearson,* 2011 ABLS 17; also see *Hearing Guide* at para 56). This direction encourages timely settlement of conduct matters and assists in the efficient administration of the LSA's disciplinary process.[2]

47. Finally, the LSA supported a start date for the suspension of January 1, 2024, some five weeks following the hearing, to permit Mr. Rice to organize his practice and transition work to others, and also to allow for Mr. Rice to complete planned work travel to underserved northern communities in December as part of his pre-existing commitments.

Submissions of Mr. Rice on Sanction

48. Mr. Rice described how he had expected to be part of the succession process at his former law firm, and he described that firm as being like family to him. However, some support promised by the firm did not materialize, and throughout 2018 there was a collapse of that relationship which caused a tremendous strain for which he sought psychiatric help. When his employment was terminated, he described a mad rush to close files and pay accounts, during which time some mistakes were made.

49. Mr. Rice emphasized that this information was provided for context, and that he recognizes the harm his conduct caused. He describes some consequences which he has already endured – the loss of his employment, lost clients, and harmed reputation.

[2] See also paragraphs 207-212 of the current Pre-Hearing and Hearing Guideline, June 3, 2022 (Guideline)

50. Mr. Rice says that he now enjoys good support at his new firm, where his practice is more focused. He is able to serve several remote Northern communities, which he finds rewarding.

51. With respect to the S.M. matter, where Mr. Rice encouraged S.M. to assist him in serious illegal conduct involving drugs, he says this was the “worst decision of his life”. He says he does not do drugs, and he abstains from alcohol.

Analysis and Decision

52. After deliberation, the Committee accepted the joint submission on sanction, finding that it is appropriate in the circumstances, is not out of line with relevant authorities or the expectations of reasonable persons, will not cause a loss of confidence by the public, and supports the proper functioning of the disciplinary system.

53. In accepting the joint submission on sanction, the Committee had particular regard to paragraphs 207 and 208 of the Pre-Hearing and Hearing Guideline:

> 207. A lawyer and Law Society counsel may agree to jointly recommend a particular sanction. If a joint submission on sanction is presented, the parties require a high degree of certainty that the sanction recommendation will be accepted by the Hearing Committee. Accordingly, the Hearing Committee must give significant deference to the joint submission on sanction.
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> 208. The lawyer must acknowledge that if there is a joint submission on sanction, while the Hearing Committee will show deference to it, the Hearing Committee is not bound by any joint submission.

54. Mr. Rice’s client service misconduct was serious and created obvious disappointment and real prejudice to his clients. It must be acknowledged that there was a lack of candour in some of his client dealings. In addition, he mismanaged client funds and breached the LSA’s accounting rules. His conduct with S.M., in seeking assistance with illegal conduct, is also very serious.

55. We note that Mr. Rice has no prior disciplinary record with the LSA, and he cooperated with the investigation into his conduct.

56. Noting the foregoing, the comparable cases cited in support of the joint submission on sanction, and the deference we must show to the joint submission, the Committee concluded that accepting the joint submission was appropriate and in the public interest. Deferring the commencement of the suspension by five weeks, to January 1, 2024, was also accepted by the Committee as being in the public interest as it would allow for client disruption to be mitigated, while permitting Mr. Rice’s planned work in otherwise underserved communities to continue.

Concluding Matters

57. Mr. Rice is suspended from practice for five months commencing January 1, 2024.

58. Mr. Rice is directed to pay the LSA costs in the agreed amount of $15,000.00, due August 31, 2024.

59. A Notice to the Profession will be issued.

60. There will be no notice to the Attorney General.

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

Dated March 13, 2024.

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Carsten Jensen, KC

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Barbara McKinley

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Catherine Workun, KC