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 JACOB ROTH
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA

Hearing Committee
Grant Vogeli, KC – Chair
Levonne Louie – Lay Bencher
Anthony Young, KC – Former Bencher

Appearances
Shane Sackman – Counsel for the Law Society of Alberta (LSA)
Dana Schindelka – Counsel for Jacob Roth

Hearing Date
April 23, 2024

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed to hearing by Conduct Committee Panel on July 18, 2023:

    1) It is alleged that Jacob Roth engaged in conduct that brought the legal profession into disrepute and that such conduct is deserving of sanction.

    2) It is alleged that Jacob Roth failed to be candid with the Law Society and that such conduct is deserving of sanction.

2. Jacob Roth received his Juris Doctorate in 2021 and started articling in Calgary with a National Firm on August 9, 2021. He continued to work at that firm as a student under an approved working agreement until February 1, 2024. As of the date of the hearing, Mr. Roth's status was inactive articling student.

3. In September and October 2021, the LSA was investigating another student. Mr. Roth was interviewed as part of that investigation. Those interviews revealed information indicating that Mr. Roth may have been involved in locating cocaine for that student. As a result, the LSA opened an investigation into Mr. Roth's conduct.

4. The LSA investigation into Mr. Roth's conduct uncovered multiple occurrences of Mr. Roth not being candid with the LSA:

- He failed to admit to cocaine use in his application to become a Student-at-Law;
- He lied to the LSA investigator about his recent cocaine use;
- He told the LSA investigator that he did not attend a hair follicle drug test when, in fact, he had attended and failed that test; and
- He denied receiving funds from a third party related to the purchase of drugs when, in fact, his bank records disclosed that he had received the funds.

5. On April 23, 2024, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Roth, based on the above citations.

6. The Committee reviewed a Statement of Admitted Facts, Exhibits and Admission of Guilt (Agreed Statement), and other Exhibits that were entered by consent and a joint submission on sanction. The Committee also heard submissions on behalf of the LSA and Mr. Roth.

7. For the reasons set out below, the Committee finds Mr. Roth guilty of conduct deserving sanction on citation 2 and not guilty on citation 1, pursuant to section 71 of the *Legal Profession Act* (*Act*).

8. Based on the facts of this case and the joint submission on sanction, the Committee finds the appropriate sanction to be a one-month suspension. In accordance with section 72 of the *Act*, the Committee orders that Mr. Roth suspended for one month starting on April 23, 2024.

9. In addition, pursuant to section 72(2) of the *Act*, the Committee orders Mr. Roth to pay $4,000.00 in costs within two years of his reinstatement.

Preliminary Matters

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

11. A private hearing was requested by an individual who was interviewed by the LSA in relation to Mr. Roth's conduct. That request was denied.

12. Authority for holding hearings in private arises under section 78 of the *Act* and Rule 98. Section 78 of the *Act* grants a hearing committee discretion to direct that all or part of the hearing be held in private. The relevant parts of this section state:

> 78(1) The public may attend and observe a hearing before a Hearing Committee or an application under section 61 or an appeal under section 76 except to the extent that the hearing is directed to be held in private under subsection (2).

(2) The Hearing Committee or the Benchers, as the case may be, on their own motion or on the application of the member concerned, the complainant, any person expected to be a witness at a hearing or any other interested party at any time before or during the proceedings, may, subject to the rules, direct that all or part of the hearing is to be held in private.

13. Rule 98 also provides authority for this Committee to allow for hearings to be held in private by way of application under section 78(2) of the *Act*.

14. The competing criteria for determining if a private hearing is warranted are transparency and the need to protect compelling privacy interest. Direction on how to deal with the competing interests is set out in paragraphs 129 to 132 of the Pre-Hearing and Hearing Guideline (Guideline):

> In considering whether some or all of the hearing is to be in private, the Hearing Committee must consider both necessity and the principles of transparency and accountability.
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> …
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> With respect to necessity, the Hearing Committee considers granting a private hearing is necessary to prevent a serious risk to an important interest and whether alternative measures would be sufficient to protect the interest at stake.
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> …
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> With respect to the principles of transparency and accountability, the Hearing Committee may consider the following factors:
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> a. The public interest and the Law Society's regulatory commitment to transparency is open and accessible hearings;
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> b. The impact on public confidence in the ability of the profession to self-regulate;
>
> c. General deterrence for the profession;
>
> d. The effectiveness and efficiency of the hearing process; and
>
> e. The detrimental effect on the applicant.

15. This balancing between transparency and privacy interests was succinctly summarized

at paragraph 36 of *Law Society of Alberta v Forsyth-Nicholson,* 2016 ABLS 52*:*

> In the application for a private hearing pursuant to section 78(2) of the *[Act]*, it is therefore our role to weigh two potentially competing public interests, namely:
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> a) The public interest in the transparency to the public and to the profession of LSA disciplinary and conduct hearings; and
>
> b) The public interest in having the LSA protect compelling privacy interests in those same disciplinary and conduct hearings.

16. In this case the privacy concerns of the individual who requested a private hearing can be fully addressed by not referring to that individual by name in the hearing or in this decision. To ensure protection of the identity of the individual, the Committee decided that the individual would not be referred to by name or initials during the hearing or in this decision. During the hearing that individual was referred to as person X.

Merits

Agreed Statement of Facts/Background

17. The LSA and Mr. Roth entered into an Agreed Statement. Those facts are summarized below.

18. In September and October 2021, the LSA was investigating another student. Mr. Roth was interviewed as part of that investigation. The interviews of Mr. Roth revealed information that appeared to indicate that he agreed to locate cocaine for another individual. Based on that information the LSA opened an investigation into Mr. Roth's conduct.

19. Mr. Roth was sent a memo making him aware of the LSA investigation. In response to that memo, Mr. Roth admitted that it was a mistake for him to not have informed the LSA of his past cocaine use in his application to become a Student-at-Law.

20. On April 19, 2022, Mr. Roth was interviewed by LSA investigators. He indicated at that interview that he had taken concrete steps to address his prior drug use and that he had not used cocaine for almost a full year at that point. At the interview, he agreed to submit to a hair follicle drug test.

21. On May 3, 2022, LSA staff requested an update on the hair follicle testing. Mr. Roth informed LSA staff that he had an appointment booked for May 17, 2022.

22. On May 26, 2022, LSA staff requested the results of the May 17, 2022 hair follicle test.

23. On May 27, 2022, Mr. Roth replied to LSA staff and said that he would respond to their

inquiry about the testing after speaking to a Practice Advisor. At that point Mr. Roth retained counsel, who replied to the LSA on behalf of Mr. Roth, advising that he had not attended for the hair follicle test.

24. On June 7, 2022, LSA staff emailed Mr. Roth's counsel indicating that they would set a new testing date and requested Mr. Roth's consent to obtain records related to his May 17, 2022 booking.

25. On June 10, 2022, Mr. Roth's counsel informed the LSA that Mr. Roth had attended the hair follicle test on May 17, 2022, and tested positive for cocaine.

26. On July 28, 2022, Mr. Roth attended another interview with the LSA. At that interview, he admitted that he failed to be candid about his recent drug use and testing. He also admitted that he delayed testing in an attempt to obtain a negative result.

27. In November 2022, the LSA received further information, from another individual, related to an alleged cocaine deal between Mr. Roth and that individual.

28. On December 7, 2022, Mr. Roth was interviewed by LSA staff again. He admitted that he communicated with a person about purchasing cocaine. He admitted to telling that person that, to his knowledge, the price of cocaine for the amount referenced would be $600.00. He was asked by LSA staff whether he received $600.00 from that individual but he denied receiving any funds from that person. He was then asked to provide his bank records for the relevant time frame. Mr. Roth took a brief adjournment during the interview and then admitted that he did receive a $600.00 e-transfer from the individual.

29. On January 14, 2022, Mr. Roth began sessions with a psychologist, relating to addiction issues. He attended these sessions until May 27, 2022.

30. In May 2022, Mr. Roth contacted ASSIST, and they put him in touch with JP who Mr. Roth started seeing for ongoing therapeutic sessions. JP wrote a letter in support of Mr. Roth which was entered as an exhibit at the hearing.

31. JP suggested that Mr. Roth attend a support recovery group. Mr. Roth began at Alcoholics Anonymous but found it to be an uneasy fit given his addiction issues were not limited to alcohol. He moved to the D Recovery group in July 2022, and has been attending regular sessions there since then.

32. Mr. Roth's employer was made fully aware of his disciplinary matters. Although Mr. Roth is no longer employed at the firm, it provided a letter of support that was entered as an exhibit.

Decision on Merits

Citation 1

33. Counsel for the LSA advised the Committee that there was not sufficient evidence to prove the allegations in citation 1. Accordingly, the Committee finds Mr. Roth not guilty citation 1.

Citation 2

34. The Agreed Statement clearly establishes that Mr. Roth was not candid with the LSA on four separate occasions:

- In his application to become a Student-at-Law he failed to disclose his cocaine use.
- In interview with LSA investigators on April 19, 2022 he said he had not used cocaine for almost a full year. That was not true.
- Mr. Roth, through counsel, told the LSA that he had not attended for a hair follicle test on May 17, 2022 when he had attended and tested positive.
- In an interview with LSA staff on December 7, 2022, Mr. Roth said he had not received $600.00 from an individual when he had received those funds.

35. Not only was Mr. Roth not candid with the LSA, but he also repeatedly failed to tell the truth until it was clear that his lies were going to be uncovered. It is particularly troubling that this pattern of deception repeated itself four times during LSA's investigation of Mr. Roth.

36. The legal system requires lawyers to be honest and have integrity in order to function appropriately. The LSA cannot tolerate dishonesty or a lack of integrity on the part of lawyers. The LSA Code of Conduct (Code) makes this clear. 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.

37. Section 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.

38. Mr. Roth was not honest. He lied repeatedly to the LSA, the very body that governs the conduct of lawyers and Students-at-Law. His conduct is clearly deserving of sanction. Not telling the truth by lying or failing to be candid is never acceptable conduct for a lawyer or Student-at-Law.

39. Accordingly, the Committee finds Mr. Roth guilty of conduct deserving of sanction on citation 2.

Sanction

Submissions of the Parties

40. The parties made a joint submission on sanction of a one-month suspension.

41. Counsel pointed out the following aggravating factors relating to Mr. Roth's conduct:

- Lying and in particular lying to avoid a penalty from the LSA raises serious concerns about Mr. Roth's integrity.
- The LSA was working co-operatively with Mr. Roth, and he continued to lie.
- His lying was repeated.
- His dishonesty with the LSA raises potential governability issues.

42. Counsel also pointed out the following mitigating factors:

- Mr. Roth has sought treatment for his drug addiction issues and has made good progress with recovery.
- He made full frank admissions.
- He and his counsel co-operated with LSA counsel once the citations were issued.

43. In support of the joint submission on sanction counsel referred the Committee to several cases. In particular, five decisions of the LSA were referred to:

- *Law Society of Alberta v. Rigler, 2008 LSA 10,* involved a Student-at-Law who submitted a false statutory declaration about drunk driving charges and gave inconsistent interviews to LSA investigations. He eventually admitted to lying to the LSA. He was suspended for 3 months.

- *In Law Society of Alberta v. Ihensekhien-Eraga, 2019 ABLS 16,* a Student-at-Law lied multiple times to LSA investigators. Her lies continued over a period of several months before she admitted that she had not told the truth. She was suspended for 12 months.

- *Law Society of Alberta v. Sharma, 2021 ABLS 2,* involved a Student-at-Law who told the LSA that he had been working full-time when he had only been working 3 days a week. He then lied to a new principal and the LSA about the amount he had worked for his initial principal. He did not express remorse for his dishonesty. That hearing committee ordered that he be deregistered as a Student-at-Law. An appeal panel overturned that decision and suspended him for 12 months.

- *Law Society of Alberta v. Pontin, 2014 ABLS 13,* involved a practicing lawyer who lied to the LSA saying that he had not represented a paralegal and her husband who had made a complaint about him. He eventually admitted his dishonesty. He was fined $2,000.00, given a reprimand and ordered to pay costs.

- In *Law Society of Alberta v. Shawar*, 2019 ABLS 8, a lawyer signed and submitted a false certificate to the LSA. Mr. Shawar admitted that he failed to be candid with the LSA and he was reprimanded ordered to pay costs.

Determining the Appropriate Sanction

44. Paragraph 185 of the Guideline provides that the fundamental purposes of sanctioning are to ensure that the public is protected from the acts of professional misconduct and to protect the public's confidence in the integrity of the profession. Paragraph 186 of the Guideline sets out other purposes of sanctioning which are:

    a) Specific deterrence of the lawyer,

    b) Where appropriate to protect the public, preventing the lawyer from practicing 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 misconduct.

45. Paragraph 198 of the Guideline sets out factors for consideration in determining the appropriate sanction. That section states:

    > The prime determinant of the appropriate sanction is the seriousness of the misconduct. The seriousness of the misconduct may be determined with reference to the following factors:
    >
    > a) the degree to which the misconduct constitutes risk to the public;

b) the degree to which the misconduct constitutes a risk to the reputation of the legal profession;

c) the degree to which the misconduct impacts the ability of the legal system to function properly (e.g., breach of duties to the court, other lawyers or the Law Society, or a breach of undertakings or trust conditions);

d) whether and to what extent there was a breach of trust involved in the misconduct;

e) the potential impact on the Law Society's ability to effectively govern its members by such misconduct;

f) the harm caused by the misconduct;

g) the potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would likely have resulted from the lawyer's misconduct;

h) the number of incidents involved; and

i) the length of time involved.

46. Further guidance on joint submissions on sanction is provided in the Guideline at paragraphs 207 and 208:

> 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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> 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.

47. The Committee also took note of the principles outlined in paragraph 16 of the recent decision in *Law Society of Alberta v. Farrell,* 2024 ABLS 11, which states in part as follows:

> … a hearing committee is required to show deference to a joint submission but is not bound by it. When a hearing committee is presented with a joint submission on

sanction, its analysis is not to determine the correct sanction in the hearing committee's view. Rather, the hearing committee is to determine whether the proposed sanction is within a range of possible sanctions that would satisfy the "public interest" test flowing from the decision of the Supreme Court of Canada in *R. v. Anthony-Coo*k (2016 SCC 43) and following cases. The public interest test requires that a decision maker should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to public interest. The following questions should be considered by a hearing committee in applying the public interest test:

1) 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 conduct and discipline system?

2) Would the joint submission cause an informed and reasonable public to lose confidence in the regulator?

3) 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 conduct and discipline system had broken down?

48. The Committee also considered the comments in paragraph 14 of *Law Society of Alberta v. Woo,* 2021 ABLS 31, which states:

> Joint submissions are important. They provide certainty to litigation and Mr. Woo in accepting this joint submission gave up his right to go hearing and have the LSA prove the citations on the evidence. Joint submissions are the product of give and take from experienced counsel who have a full picture of the case and can weigh the risks of litigation. A joint submission should only be interfered with in the rarest of cases where it could be said that the sanction was unhinged from the functioning of a proper regulatory system. This is not one of those cases.

Analysis and Decision on Sanction

49. The Committee was very concerned about Mr. Roth’s repeated dishonesty.

50. Of the cases referenced above it is the Committee’s view that the facts of the *Rigler* case were closest to the facts of this case while the conduct in *Shawar* and *Pontin* cases involved conduct that was less serious than Mr. Roth’s conduct. Overall, a suspension of one month is supported by the cases that were referred to by counsel.

51. Considering the facts of this case, comparable cases cited in support of the joint submission on sanction, and the deference that must be shown to a joint submission, the Committee accepts the joint submission on sanction. It is appropriate in the circumstances because it is not out of line with relevant authorities, will not cause a loss of confidence by the public, and supports the proper functioning of the disciplinary system.

52. Accordingly, the Committee orders that Mr. Roth be suspended for one month.

Referral to the Minister of Justice and Solicitor General

53. Section 78 (6) of the *Act* provides:

> Notwithstanding the subsections 1-4, 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 maybe, shall forthwith direct the Executive Director to send a copy of the hearing record to the Minister of Justice and the Solicitor General.

54. Counsel for the LSA and counsel for Mr. Roth jointly submitted that there were not reasonable and probable grounds to believe that Mr. Roth had committed a criminal offence. They referred the Committee to the recent decision *Law Society of Alberta v. Doucet, 2023 ABLS 12.* That case concluded that a hearing committee has a duty to engage substantively with the reasonable and probable grounds test and look at the specific facts of the case in doing so.

55. After analyzing the specific facts of this case, the Committee concludes that there were not reasonable and probable grounds to believe that Mr. Roth committed a criminal offence. Therefore, a referral to the Minister of Justice and Solicitor General is not required.

Concluding Matters

56. The Committee orders that Mr. Roth be suspended for one month commencing April 23, 2024. Mr. Roth is further ordered to pay costs of $4,000.00, to be paid withing two years of being reinstated as a practicing lawyer.

57. Notice to the Profession pursuant to Section 85 of the *Act* is required in the circumstances of a suspension. That Notice was issued on April 24, 2024.

58. A referral to the Minister of Justice and Solicitor General is not required.

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

Dated December 17, 2024.

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Grant Vogeli, KC

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Levonne Louie

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Anthony Young, KC