

**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 C. MICHAEL SMITH  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Ronald Sorokin – Chair  
Ryan Anderson, KC – Bencher  
Mary Ellen Neilson – Lay Bencher

**Appearances**

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)  
C. Michael Smith – Self-represented

**Hearing Date**

April 10, 2024

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT – SANCTION PHASE**

**Overview**

1. C. Michael Smith is a lawyer who has been practicing since 1977. He practices in civil and criminal litigation.
2. On September 13, 2022, the Conduct Committee directed three citations against Mr. Smith to hearing.
3. A hearing on the merits took place from September 26 to 28, 2023, and for the reasons set out in its November 24, 2023 decision (*Law Society of Alberta v Smith*, 2023 ABLS 26) (Merits Decision), the Hearing Committee (Committee) found Mr. Smith:
  - 1) guilty of conduct deserving of sanction in relation to the following citations:
    - i. Citation 2: that Mr. Smith failed to act with courtesy and civility and that such conduct is deserving of sanction;

- ii. Citation 3: that Mr. Smith failed to respond fully and substantively to inquiries from the Law Society and that such conduct is deserving of sanction;
  - 2) not guilty of sanction in relation to Citation 1 which alleged that Mr. Smith engaged in conduct that brings the legal profession into disrepute by removing and damaging a realtor's lawn sign and that such conduct is deserving of sanction.
4. On April 10, 2024, the Committee convened the hearing on sanction. After reviewing all of the evidence and exhibits and hearing oral arguments of the LSA and Mr. Smith, for the reasons set out below the Committee finds that, based on the facts of this case, the appropriate sanction is a reprimand and a fine of \$5,000.00 (\$2,500.00 for each guilty citation).
  5. In addition, pursuant to section 72(2) of the *Legal Profession Act (Act)*, the Committee orders costs in the amount of \$20,000.00, to be paid in full by April 10, 2026.

### **Preliminary Matters**

6. As noted in the Merits Decision, there were no objections to the constitution of the Committee, or its jurisdiction and a public hearing proceeded. No objections or private hearing applications were made during the sanction phase of the hearing, so the hearing continued before this Committee in public.

### **Submissions on Sanction**

#### *LSA Submissions*

7. The facts related to the sanctionable conduct are set out in the Merits Decision. This phase of the Hearing is to consider the appropriate sanction for that conduct.
8. LSA counsel submitted that a reprimand, a fine of \$5,000.00 and costs are appropriate. LSA counsel's rationale in support of their submission was that two of the three citations were proved.
9. Respecting the finding of guilt in Citation 2 for failing to act with courtesy and civility: LSA counsel submitted that this is becoming an increasingly important consideration and ought to be taken seriously.
10. Respecting the finding of guilt in Citation 3 for failing to respond fully and substantively to inquiries from the LSA, LSA counsel submitted that this conduct relates to governability and should not be taken lightly.

11. LSA counsel noted that section 72 of the *Act* allows a choice to be made between a reprimand or suspension or disbarment. LSA counsel submitted that while the guilty conduct is not serious enough to warrant suspension or disbarment, the conduct was serious enough to warrant more than just a reprimand and, as such, submitted that a fine was also appropriate.
12. LSA counsel referred the Committee to authorities where hearing committees have found a lawyer's conduct to be considered uncivil and worthy of sanction [Citation 2], including:
  - 1) *Law Society of Alberta v Rauf*, 2021 ABLs 24 – the member was found guilty of failing to act in a courteous and civil manner by communicating in a manner that was abusive, offensive, and inconsistent with the proper tone of a professional communication from a lawyer. The hearing committee ordered a reprimand, a fine of \$2000.00 and costs.
  - 2) *Law Society of Upper Canada v. Robson*, 2017 ONLSTH 132 – the member was found guilty of unprofessional conduct arising from a series of emails, six of which were personal and/or ethical criticisms of individual lawyers and one of which was a racist attack on a fellow lawyer. The member was suspended and costs were ordered.
  - 3) *Law Society of Alberta v. Lee*, 2009 ABLs 31 – the member was found guilty of three citations for unprofessional and discourteous comments. The member referred to another lawyer as “a big fat liar”. The panel ordered a fine of \$1500.00 for each of the three citations and costs.
  - 4) Cases where there was a reprimand, but no fine was ordered: *Law Society of Alberta v. Forsyth-Nicholson*, 2013 ABLs 24 and *Law Society of Upper Canada v. Ernest Guiste*, 2011 ONLSHP 0129. In *Forsythe-Nicholson*, there was a joint submission which indicated a level of cooperation and an agreement to wind-up her practice. In *Guiste*, the member accepted that he “crossed the line” and that his behavior was not appropriate and recognized that his future communication with other counsel and individuals in the judicial system must be tempered (*Guiste*, paragraphs 33 – 37).
13. LSA counsel referred the Committee to the following authorities where hearing committees have found a lawyer's conduct worthy of sanction for failing to respond fully and substantively to inquiries from the relevant law society [Citation 3]:
  - 1) *Law Society of Ontario v. Diamond*, 2021 ONCA 255 - the member was reprimanded and ordered to pay costs. In that case, the panel recognized that the member had remedied his conduct prior to the hearing.

- 2) *Daniels (Re)*, 2016 LSBC 17 - the member was reprimanded, ordered to pay a fine of \$2,500.00 and pay costs.
14. With respect to costs, LSA counsel sought costs in full of \$33,504.68 based on the Estimated Statement of Costs that was produced as an Exhibit (Exhibit 20). LSA counsel submitted that costs were appropriate on the basis of several factors, including:
  - 1) There was a two and a half day Hearing;
  - 2) There were two preliminary applications at the Hearing, both of which were heard and dismissed;
  - 3) Mr. Smith did not consent to any exhibits prior to the Hearing;
  - 4) Mr. Smith provided no documents and no authorities prior to the Hearing;
  - 5) LSA counsel and Mr. Smith were unable to reach agreement on any admitted/agreed statements of facts;
  - 6) Mr. Smith underwent an awkward and lengthy interview with the LSA investigator prior to the Hearing. He was evasive and non-responsive to questions both to conduct counsel and to the investigator;
  - 7) Mr. Smith objected to video identification evidence during the investigation and at the Merits Hearing.
15. LSA counsel referred the Committee to various cases, including the cases cited above where costs were ordered and the Alberta Court of Appeal case of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, which recognized that while costs should, generally, be borne by the profession, there are exceptions where substantial costs are appropriate. One of those exceptions is when a member fails to cooperate with the regulator's investigation.

*Mr. Smith's Submissions*

16. Mr. Smith does not admit that any of his conduct was deserving of any sanction.
17. Respecting the finding of guilt in Citation 2 for failing to act with courtesy and civility, Mr. Smith continued to submit that it is important to consider if the alleged uncivil communications were in a private or public forum. Mr. Smith admits that uncivil communications in a public forum are acceptable. Mr. Smith submits that since his alleged uncivil communications were in a private forum, his conduct was not deserving of sanction.

18. Further, Mr. Smith submits that he did not allege that CS was unethical or unprofessional.
19. Respecting the finding of guilt in Citation 3 for failing to respond fully and substantively to inquiries from the LSA, Mr. Smith submits that he was cooperative with the LSA. Mr. Smith submits that he invited LSA counsel to prepare an agreed statement of facts, but that LSA counsel prepared and proposed a long and extraneous document and, ultimately, no agreement was reached.
20. On the video evidence, Mr. Smith asserted, as he did at the hearing, that a person may be unable to identify themselves in a video and that video evidence is unreliable.
21. Mr. Smith advised that while he intends to appeal, given the Merits Decision, he agreed that a reprimand was appropriate, but he submitted that a fine was not appropriate.
22. Mr. Smith notes that the *Robson* case dealt with abusive and offensive emails to another lawyer. Mr. Smith submits that *Robson* is distinguishable because Mr. Smith did not allege in his communications with CS that CS was acting unethically or unprofessionally.
23. Mr. Smith submits that the *Lee* case is distinguishable as there is a strong distinction between calling a person “a big fat liar” and comparing a person to the president of the United States.
24. Mr. Smith submitted that no costs should be ordered. He submitted that an order of costs would constitute a penalty. Mr. Smith submitted that:

...The penalty of costs is so severe in this case that it far outweighs any risk that I had if I had pled guilty. That is a reason not to impose costs on me, as I am making legitimate and intelligent arguments in defence of the independence of the Bar itself from its own governing society making sure lawyers do not have to look over their shoulder the whole time they’re representing people on the off chance that they might have to pay \$30,000 for the privilege of doing what is right. ...<sup>1</sup>
25. Mr. Smith submits that awarding costs against him would send a chilling message to litigators.

**Sanction Principles and Excerpts from LSA Pre-Hearing and Hearing Guideline, June 2022 (Guideline)**

26. Section 72(1) of the *Act* requires a hearing committee, on finding a member guilty of conduct deserving of sanction, to disbar, suspend or reprimand the member. The type of sanction must be determined with reference to the purposes of sanctioning.

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<sup>1</sup> Hearing Transcript, at page 514, lines 7-17.

27. The followings are excerpts of the Guideline that are especially pertinent to this case (with emphasis added in bold):

#### Purpose of Sanction

185. **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.**
186. Other purposes of sanctioning include:
- 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 the misconduct.**
187. Sanctioning must be purposeful. The factors that relate most closely to the fundamental purposes outlined above carry more weight than others.

#### Type of Sanction

192. **A reprimand is appropriate when it is not necessary to limit a lawyer's right to practise. A reprimand is delivered orally at the hearing and is meant to express the profession's denunciation of the lawyer's conduct.**
193. **An effective reprimand will:**
- a. state what is expected of a lawyer;
  - b. explain how the lawyer fell below expected standards;
  - c. iterate that the misconduct reflects poorly on the lawyer and the profession; and
  - d. **address either the lawyer's acceptance of responsibility or the lawyer's need for further reflection.**

#### Factors for Consideration in Determining Appropriate Sanction

198. 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 a 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.
200. **The ability of the Law Society to govern the profession is essential to self-governance. Certain types of misconduct undermine the Law Society's regulatory function and must be strongly denounced.** Such misconduct includes but is not limited to:
- a. failing to respond to communications from the Law Society;
  - b. failing to be candid with the Law Society;
  - c. **failing to cooperate with the Law Society;**
  - d. breaching an undertaking to or a condition imposed by the Law Society;
  - e. refusing to participate in Conduct Proceedings;
  - f. inappropriate communications with the Law Society, including those that are offensive, abusive or harassing; and
  - g. practising law while suspended or inactive.
204. The Hearing Committee may consider additional factors that have either an aggravating or mitigating effect on the appropriate sanction. These factors include the following, without limitation:
- a. **prior discipline record;**
  - b. **length of time the lawyer has been in practice;**
  - c. **acknowledgment of wrongdoing including self-reporting and admission of guilt;**
  - d. **level and expression of remorse;**
  - e. level of cooperation during the Conduct Proceedings such as attendance at PHCs, adherence to the pre-hearing Rules, etc.;
  - f. medical, mental health, substance abuse or other personal circumstances that impacted the lawyer's conduct;
  - g. restitution made, whether partial or in full;
  - h. rehabilitation since the time of the misconduct;
  - i. the extent to which the lawyer benefitted from the misconduct; and
  - j. whether the misconduct involved taking advantage of a vulnerable party.

216. If a lawyer is found guilty of conduct deserving of sanction, the Hearing Committee may order the lawyer to pay all or part of the costs of the Conduct Proceedings pursuant to s.72(2)(c) of the Act and Rule 99.

....

221. It is the Law Society's default position that when a lawyer is found guilty of conduct deserving of sanction, the actual costs of the hearing should be paid by the lawyer. This position is based on the proposition that the hearing expenses incurred in the exercise of the Law Society's statutory obligations are appropriately charged to the lawyer whose conduct is under scrutiny.

### **Analysis and Decision on Sanction and Costs**

28. In conducting our analysis, we have considered the authorities provided by LSA counsel and the Guideline.

29. Respecting Citation 2, and the cases where a lawyer's conduct was considered uncivil and worthy of sanction, the Committee finds that the following cases, cited previously above, are particularly relevant:

- 1) *Rauf* – where the panel ordered a reprimand, a fine of \$2000 and costs and wrote (at paragraphs 15 - 17):

While we are reluctant to impose a suspension, we believe it is necessary to strongly denounce Mr. Rauf's behaviour. He is a senior member of the Bar who ought to govern himself with an appropriate temperament and respect for others in the justice system.

....

Mr. Rauf, the practice of law requires advocacy for the interest of a client and the rule of law. Your conduct at the Fort Saskatchewan Correctional Centre was abusive and bullying. It would have been unacceptable for any member of the public to act as you did, but it is wholly unacceptable for a member of the legal profession to use the tone and language that you did....

- 2) *Robson*, where the member was suspended and costs were ordered. The panel noted that the misconduct was serious and noted that the member showed no remorse. The panel wrote (at paragraphs 21-28):

...There is no evidence that his conduct was out of character or unlikely to happen again. There is no evidence of remorse or extenuating circumstances.

...



We have reviewed the cases put before us by the parties, as well as the *Groia* decisions and the penalties that were imposed in those decisions. While several factors were of course at play in those decisions, we noted in particular the nature and severity of the abusive or offensive communications that occurred. We also say that there were mitigating circumstances in almost all of the cases, such as remorse, apologies, counselling, character letters, provocation, medical issues, and agreed statement of facts...

...

... the Hearing Panel noted in *Law Society of Upper Canada v. Tulk*, 2009 ONLSHP 85 at para. 58 that “the lack of civility by lawyers to their colleagues in the profession is a matter of contemporary publicity and concern.” This proposition was demonstrated in the *Groia* decisions, which treated the issue of civility as a matter of increasing gravity in the profession. With the great expansion of the Bar in both size and diversity, as well as the profound challenges in providing access to justice both inside and outside the adjudicative systems, the consequences of incivility for the administration of justice have become more acute, and disciplinary penalties must be proportionate to the contemporary harm to the public interest.

...

The Lawyer also submitted that neither the *Rules of Professional Conduct* nor the jurisprudence have afforded any clear lines by which lawyers can guide their conduct in communicating with others. He referred to the “lack of a coherent standard,” and asserted that the conduct application should not have been brought against him. This approach involved a renewal of themes that he raised in defence of the misconduct. Moreover, we have the *Groia* case, which establishes that there are rules to be followed: incivility constitutes professional misconduct, and there will be penalties.

- 3) *Lee* – where the panel ordered a fine of \$1500 for each of the three citations and costs. The member referred to another lawyer as “a big fat liar”.
30. In the Merits Decision, the Committee found that in Mr. Smith’s communications with CS, he called CS a liar and suggested that CS was incompetent and unethical. Mr. Smith’s communications were uncivil and discourteous (at paragraphs 64 (c), 91, 92 and 98).
31. Mr. Smith is a senior member of the member of the LSA who ought to govern himself with an appropriate temperament and respect for others in the justice system (see *Rauf*). Incivility constitutes professional misconduct and there will be disciplinary penalties for incivility (see *Robson*).

32. Respecting Citation 3, and the cases where hearing committees have found a lawyer's conduct worthy of sanction for failing to respond fully and substantively to inquiries from the relevant law society, the Committee accepts the authorities provided by LSA counsel and cited above.
33. For the reasons set out in the Merits Decision, the Committee found that Mr. Smith's misconduct was serious and worthy of sanction. The Committee finds that a reprimand and a fine of \$5,000.00 (\$2,500.00 for each guilty citation) is appropriate based on the conduct of Mr. Smith in relation to the citations he was found guilty of, the relevant case law cited and the following factors:
  - a) The LSA must be able to effectively govern its members. Mr. Smith was not cooperative during the investigation or the hearing.
  - b) Mr. Smith did not acknowledge any wrongdoing and expressed no remorse for his behavior.
  - c) Mitigating factors are that Mr. Smith has no prior discipline record and has practiced for over 40 years.
34. The Estimated Statement of Costs (Exhibit 20), in the total amount of \$33,504.68, was provided by the LSA in accordance with Rule 99(1).
35. The Committee found that the costs claimed by the LSA are reasonable. The rates are based on a tariff that is over two decades old. Counsel's hourly rates claimed are significantly less than market rates, given that the hourly rate of \$125.00 per hour for LSA Counsel is well below market rate.
36. The Committee agreed that costs are appropriate in this case and refers to and accepts the submissions of LSA counsel summarized above in paragraphs 13 and 14 and the Guideline at paragraphs 216 and 221.
37. Given that Mr. Smith was found guilty on two of the three citations, the Committee thought it appropriate to reduce the costs sought by the LSA and ordered Mr. Smith to pay costs of \$20,000.00.

### **Reprimand**

38. At the sanction hearing, the following oral reprimand was issued:

Mr. Smith, your conduct in this matter is deserving of sanction, and we must, and hereby do, reprimand you for that conduct.

The Hearing Guide of the Law Society requires that Hearing Committees take a purposeful approach to sanctioning a member who has been found guilty of

conduct deserving of sanction. The fundamental purpose of sanctioning is the protection of the best interests of the public and the protection of the reputation and standing of the legal profession generally.

Mr. Smith, you are an experienced lawyer, having practiced for over 40 years. It is clear to the Committee that you have a long and principled career having made significant contributions to the administration of justice in Alberta. You have no prior discipline record.

Your conduct that led to the findings of guilt for Citations 2 and 3 fell below what is expected of a lawyer. Your communications with other counsel that led to the finding of guilt on Citation 2 were uncivil and breached the Law Society Code of Conduct.

You were not cooperative with the Law Society in their investigations which led to the finding of guilt on Citation 3.

Your misconduct reflects poorly on the profession.

You have not accepted responsibility and show no remorse for your behaviour. In these matters, you put your professional reputation at risk and in expressing this reprimand today, the Committee urges you to constantly have at the forefront of your mind civility required of all of us as members of this profession and the diligence that we all must demonstrate to protect our clients' interests and to maintain our reputation and the reputation of this profession. We also remind you that the Law Society is a self-governing body. Its ability to regulate and govern lawyers in accordance with its statutory mandate to protect the public is obstructed when lawyers are uncooperative.

### **Application for a Stay Pending an Appeal**

39. After the reprimand was issued, Mr. Smith advised the Committee of his intention to appeal the Committee's decision and sought to stay the order for fine and costs, pending the appeal.
40. An appeal pursuant to section 75(3) is commenced by filing a notice of appeal within the 30-day period after the date on which a copy of the hearing report is given to the member. Under section 75(6) of the *Act*, any time after the decision is rendered pursuant to section 72(1) of the *Act*, the lawyer "may apply to the Hearing Committee for a stay of the operation of the order, pending the conclusion of the appeal to the Benchers".
41. In this case, the stay application was technically premature given that the final written report on sanction had not been issued yet. However, the Committee agreed to make a determination on the stay application.

42. Given that: the sanction had already been meted out in the oral reprimand delivered at the hearing (set out in paragraph 38); if there is an appeal, it will likely be heard within a couple of years; and the deadline for payment of costs and fine is April 2026, the Committee granted the stay of the order for payment of the fine and costs, pending Mr. Smith's appeal.

### **Concluding Matters**

43. The Committee orders a reprimand, a fine of \$5,000.00 and costs in the amount of \$20,000.00 to be paid in full by April 10, 2026.
44. The Committee grants a stay of the order, pending appeal, with relation to the payment of fine and costs.
45. There shall be no Notice to the Profession or referral to the Attorney General.
46. 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 Mr. Smith will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated May 22, 2024.

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Ronald Sorokin

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Ryan Anderson, KC

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Mary Ellen Neilson