

**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 STEPHEN SMITH
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Anthony Young, KC – Chair
Barbara McKinley – Former Bencher
Kelsey Meyer – Bencher

Appearances

Henrietta Falasinnu – Counsel for the Law Society of Alberta (LSA)
Simon Renouf, KC – Counsel for Stephen Smith

Hearing Date

April 25, 2025

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed to hearing by a Conduct Committee Panel on April 16, 2024:
 - 1) It is alleged that Stephen Smith failed to serve his client, T.N., in a competent, timely, diligent and efficient manner and that such conduct is deserving of sanction.
 - 2) It is alleged that Stephen Smith failed to act honourably and with integrity, including by misrepresenting the status of an order and fabricating an email to another lawyer, and that such conduct is deserving of sanction.
2. Mr. Smith was admitted as a member of the LSA in 2012 and has no prior disciplinary record. His practice is primarily in criminal law.
3. This matter arose from Mr. Smith's representation of T.N., who was in custody on criminal charges. Mr. Smith was retained by Legal Aid Alberta on June 2, 2021. He

successfully argued a bail review before Chief Justice Moreau on August 10, 2021, resulting in an order for T.N.'s release. However, the necessary written release order was not prepared or filed in a timely manner, and T.N. remained in custody for thirteen days longer than warranted.

4. The LSA and Mr. Smith entered into a Statement of Admitted Facts, Exhibits and Admissions of Guilt (Agreed Statement) in relation to Mr. Smith's conduct on February 4, 2025. The Agreed Statement sets out the relevant facts and admissions related to the citations.
5. A Conduct Committee Panel found the Agreed Statement acceptable on March 11, 2025. Accordingly, pursuant to section 60(4) of the *Legal Profession Act (Act)*, it is deemed to be a finding of this Hearing Committee (Committee) that Mr. Smith is guilty of conduct deserving of sanction on the above two citations.
6. For the reasons that follow, the Committee also finds that, based on the facts of this matter and in accordance with section 72 of the *Act*, the appropriate sanction is that Mr. Smith be suspended for a period of 45 days.
7. In addition, pursuant to section 72(2) of the *Act*, the Committee orders that Mr. Smith pay costs of \$5,184.38.

Preliminary Matters

8. There were no objections to the jurisdiction or composition of the Committee. The hearing proceeded in public, as no application for a private hearing was made.

Background

9. The essential facts from the Agreed Statement are set out below.

Citation 1 - Failure to serve client

10. Mr. Smith admitted that following the successful bail review, he did not prepare or send the release order to Crown counsel, K.M., as required. He mistakenly informed T.N.'s father that the order had been sent to the Court and that he was awaiting the Court's response. When the Court later contacted his office about the missing order, it became apparent that it had never been sent.
11. Mr. Smith acknowledged that he failed to serve T.N. in a competent, timely, diligent and efficient manner and that such conduct is deserving of sanction.

Citation 2 - Failure to Act Honourably and with Integrity

12. The second citation concerns Mr. Smith's communications following discovery of the missing order. On August 20, 2021, he inaccurately told his law partner, S.E., that he had sent the order to K.M. by email a week earlier. Mr. Smith also spoke with Chief Justice Moreau (as she then was) on August 23, 2021 and told her that he sent the Order to KM and had not received a signed copy back from KM.
13. When asked to produce a copy of the email by S.E., he fabricated an email purporting to show that the order had been sent.
14. When confronted by S.E., he initially maintained that the email was genuine before ultimately admitting that it was false.
15. Mr. Smith admitted that his fabrication of an email to another lawyer, compounded by misrepresentations to his colleague and the Court, constitutes a failure to act honourably and with integrity and is conduct deserving of sanction.
16. The Committee notes that Mr. Smith's failure to send the release order to K.M., along with his incorrect advice to T.N.'s father, his initial incorrect advice to S.E., and his incorrect advice to the Court, as referenced in the Agreed Statement, were due to mistakes and a lack of due diligence on Mr. Smith's part. There is no evidence that Mr. Smith intended to mislead any of T.N.'s father, S.E., or the Court in those instances.
17. However, subsequent to that, and upon discovering his mistake that he had not sent the release order to K.M. or to the Court and that his initial advice to S.E. and to the Court was incorrect, Mr. Smith intentionally and repeatedly lied to S.E., and fabricated an email in an apparent effort to substantiate his lies.

Submissions on Sanction

18. Counsel for the LSA led evidence from the Manager, Practice Management at the LSA (MPM) with regard to Mr. Smith's participation in the LSA's Practice Assessment process. That evidence established that during the Practice Assessment process, the assessors requested that Mr. Smith enter 16 undertakings with the LSA. Mr. Smith advised he agreed to all the undertakings except for two. In relation to those, he provided detailed explanations as to his concerns regarding the same.
19. MPM gave evidence of further efforts to contact Mr. Smith regarding the remaining undertakings. MPM followed up with Mr. Smith by email on July 4, 2022. Mr. Smith responded on July 11, 2022 and suggested a date for a call to discuss. MPM was on holiday at the time and responded to Mr. Smith upon her return by email dated July 18, 2022. Having not heard back from Mr. Smith, a letter from MPM was emailed to Mr. Smith on August 25, 2022, advising, among other things, of her intent to request from the Practice Review Committee closure of Mr. Smith's Practice Management file. By

letter dated October 4, 2022, the LSA advised Mr. Smith that his Practice Management file had been closed.

20. Counsel for the LSA appeared to lead this evidence in an effort to suggest that Mr. Smith did not cooperate with the Practice Assessment process. Although the Committee notes that the evidence indicates that both parties could have responded to each other more quickly on certain occasions, the evidence also indicates that Mr. Smith agreed to all but two of the requested undertakings and provided reasonable explanations as to his concerns with respect to the other two. None of this evidence causes the Committee any concern about a lack of cooperation or lack of responsiveness or participation by Mr. Smith in the Practice Assessment process, nor is there any citation with respect to the same against Mr. Smith. The Committee thus gives little weight to this evidence.
21. Ultimately, counsel for the LSA submitted that a six-month period of suspension was warranted, emphasizing that the integrity of the profession requires meaningful sanction for dishonesty, even where the misconduct is isolated.
22. Counsel for the LSA submitted that the proposed sanction was justified given the client harm (extended incarceration), fabrication of an email, failure to complete mandatory Practice Management and that there was no medical evidence to support claimed health issues.
23. LSA counsel presented a number of cases with varying facts in support of her submissions, with suspensions ranging from 30 days to eight months.
24. Mr. Smith's counsel submitted that a reprimand or short suspension would suffice as sanction in this case, however, if a suspension was to be ordered by the Committee, counsel for Mr. Smith recommended a one-month suspension. He urged the Committee to consider Mr. Smith's good character and his clean record of over twelve years, prompt acknowledgment of his misconduct, full cooperation in the conduct process, the short duration of deceit, passage of time since the events (over four years) and the absence of ongoing risk to the public. In support of his position, counsel referred to a number of cases and particularly focused on the cases of *Law Society of Alberta v. Rigler* 2008 LSA 10 (three-month suspension for false declaration) and *Law Society of Alberta v. Roth* 2024 ABLS 27 (one-month suspension for repeated misrepresentations).

Analysis and Decision on Sanction

25. The LSA's Pre-Hearing and Hearing Guideline (Guideline) at paragraph 98 notes that the prime determinant of the appropriate sanction is the seriousness of the misconduct and that the seriousness of the misconduct may be determined by various factors, some of which include: the degree to which the misconduct constitutes a risk to the

public and a risk to the reputation of the legal profession, the harm caused by the misconduct, the number of incidents involved, and the length of time involved.

26. Both parties essentially agree that a suspension is appropriate to address Mr. Smith's conduct but disagree on the length of that suspension. Paragraph 191 of the Guideline states:

Suspension is appropriate for the denunciation of serious or repeated misconduct where it is reasonable to believe that temporarily removing the lawyer from the profession will result in compliance with professional standards in the future. Aggravating and mitigating factors may be recognized in determining the length of the suspension.

27. The Committee found the following mitigating factors:

- a) Mr. Smith admitted the facts and his misconduct, facilitating an efficient hearing.
- b) He expressed genuine remorse and acknowledged the gravity of his actions.
- c) He cooperated fully with the investigation and the disciplinary process.
- d) He has no prior disciplinary history in more than a decade of practice.
- e) He provided five remarkably strong character reference letters from individuals who had reviewed the Agreed Statement, including one from a Justice of the Court and one from S.E., being the colleague of Mr. Smith who had reported his conduct to the LSA.

28. The Committee found the following aggravating factors:

- a) The misconduct involved dishonesty towards a fellow member of the bar.
- b) The deception was deliberate and repeated over several days and done to conceal an earlier error.
- c) The client suffered actual prejudice through thirteen days of unnecessary detention.

29. The Committee also notes the recent Court of Appeal decision of *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258, which was released on July 17, 2025, and provides guidance to professional regulators in disciplinary hearings. Particularly, the Court states that sanctioning must be done proportionally and with restraint. In paragraph 95 of *Charkhandeh*, the Court of Appeal states:

... In accordance with the principle of restraint, the most lenient sanction that would serve the legitimate purposes of the sanctioning process should be selected.

30. The Committee accepts that while dishonesty is a serious breach, proportionality requires consideration of both intent and context. Mr. Smith's misconduct was serious, but it arose in a moment of professional panic rather than a sustained pattern of deceit.
31. Like *Roth*, this case involves a single episode of dishonesty, promptly admitted and followed by remorse and cooperation. However, unlike *Roth*, Mr. Smith's conduct affected the liberty of his client and involved falsification of evidence.
32. Balancing these factors, the Committee determines that a 45-day suspension appropriately reflects the seriousness of the misconduct, promotes specific and general deterrence, and protects public confidence in the profession. The 45-day suspension will commence 30 days following the issuance of this decision.

Costs

33. An Estimated Statement of Costs was presented by LSA counsel in the amount of \$7,226.63 and it was acknowledged that some adjustments would be made to the final version. Mr. Smith agreed to payment of the costs as set out by LSA counsel.
34. The recent *Charkhandeh* decision also provides commentary on costs. The LSA has recently provided a revised Estimated Statement of Costs, removing certain line items in response to *Charkhandeh* and setting the final amount at \$5,184.38. Given that the amount is reasonable to Committee, and noting parties' agreement at the hearing to the payment of costs, costs of \$5,184.38 are ordered to be paid by Mr. Smith within one year of issuance of this decision.

Referral to the Attorney General

35. LSA counsel submitted that Mr. Smith's actions fell within the purview of section 366 of the *Criminal Code* (R.S.C., 1985, c. C-46) of forgery or making a false document and thus a referral to the Attorney General was required. Mr. Smith's counsel had no submissions to make on the AG referral.
36. The Committee finds that there are reasonable and probable grounds to believe that the lawyer has committed a criminal offence. Accordingly, pursuant to section 78 of the *Act*, a referral to the Attorney General is required.

Concluding Matters

37. In Summary:

- 1) The Committee orders that Stephen Smith is suspended for 45 days, to commence 30 days following the issuance of this decision.
- 2) Mr. Smith shall pay the costs of \$5,184.38 by November 24, 2026.
- 3) Pursuant to section 85 of the *Act*, *there* shall be a Notice to the Profession.
- 4) There shall be a Notice to the Attorney General.

38. 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. Smith, including his clients, will be redacted and any other further redactions will be made as are necessary to preserve client confidentiality and solicitor-client privilege as required by Rule 98(3).

Dated November 24, 2025.

Anthony Young, KC

Barbara McKinley

Kelsey Meyer