

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**RYAN WILLIAM FAWCETT**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**DECISION**

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Hearing Date: April 13, 2022

Appearances for the Law Society of Manitoba:

Rocky Kravetsky

Appearances for Ryan William Fawcett:

Greg Bartel

Discipline Committee Panel:

Katherine L. Bueti

Gerrit Theule

Miriam Browne (Public Representative)

**Introduction**

1. This virtual hearing before a panel of the Discipline Committee of the Law Society of Manitoba, pursuant to the provisions of *The Legal Profession Act*, was conducted in Winnipeg on April 13, 2022. The Discipline Committee Panel consisted of Katherine L. Bueti, Gerrit Theule, and the Public Representative Miriam Browne. The Law Society was represented by Rocky Kravetsky. The member was represented by Greg Bartel, and the member was present.

2. This hearing was required as the result of a Citation issued on January 25, 2021 (the "Citation" Exhibit 1) against Mr. Fawcett which set forth 2 counts of Professional Misconduct and 1 count of Conduct Unbecoming a Lawyer.

**Jurisdiction**

3. At the commencement of this discipline hearing Jurisdiction, Service and Panel Composition were admitted by the member. The hearing was an open hearing. A non-party attendee was present for the hearing.

**Preliminary Matters**

4. The complainants are to be referred to by way of number rather than initials.

5. Ryan William Fawcett is a member of the Law Society of Manitoba (the "Society"), having been called to the bar in 2001.

6. Mr. Fawcett has no formal discipline history with the Society.

### **Findings of Misconduct**

#### **Facts**

7. The facts of this case are filed in an Agreed Statement of Facts (Exhibit 1). These facts detail a pattern of inappropriate communications with 5 complainants over an extended period of time which constitute the Conduct Unbecoming a Lawyer charge.

8. Mr. Fawcett's Conduct Unbecoming a Lawyer charge occurred outside of his professional obligations. From approximately August 2016 through July 2020, Mr. Fawcett made unwanted communications of a sexual nature to five women.

9. Mr. Fawcett knew each of these women through his work as a lawyer, the unwanted communications were outside of the course of Mr. Fawcett's professional activities. None were directly connected with any client matter or other professional activity. All of these communications took place while Mr. Fawcett was under the influence of alcohol.

10. The facts of the Professional Misconduct Conduct charges include a breach of written undertaking that had been provided to the Society on July 8, 2020.

11. Mr. Fawcett has struggled from time to time with addictions to alcohol and drugs. As a result, certain remedial and protective Undertakings and Restrictions have been given or imposed in the past to address Mr. Fawcett's addictions and related conduct.

12. Upon receipt of the complaint from the first complainant, received in October 2019, the Society conducted an investigation in which Mr. Fawcett disclosed that he was once again struggling with substance abuse, specifically alcohol.

13. Having regard to Mr. Fawcett's successful management of harmful substance abuse in the past and his willingness to give certain undertakings to the Society, this complaint was initially resolved by Mr. Fawcett's formal Undertaking dated July 8, 2020.

14. This Undertaking included provisions as to treatment and reporting upon the progress of that treatment to the Society. It also contained undertakings including to:

8. abstain from the consumption of alcohol. If I experience a relapse of consumption of alcohol, I will notify the Society in writing forthwith; and

9. have no contact with any female member of the Society by FaceTime, text, email or other direct messaging or video communications application, for any reason other than for strictly work-related matters. If I intend on communicating with a female Lawyer of the Society for a non-work-related reason, in the manners described, I will first obtain the written authorization of the Society.

15. Mr. Fawcett complied with the treatment undertakings but breached undertakings 8 and 9 almost immediately.

16. On July 10 and 28, 2020 Mr. Fawcett contacted the second complainant by text messages that were not strictly work related. No authorization was received or sought from the Society. These messages were sent outside of ordinary working hours.

17. For a period of time after giving his Undertaking of July 8, 2020, beginning almost immediately, Mr. Fawcett consumed alcohol and upon sober awareness of this did not notify the Society forthwith.

**Admission**

18. Mr. Fawcett admitted the facts contained in the Agreed Statement of Facts. No other evidence or submissions were made on the the issues of Professional Misconduct and Conduct Unbecoming a Lawyer other than that the admitted conduct constitutes:

- a. Professional Misconduct for breach of Rule 7.2-11 of the *Code of Professional Conduct* as alleged in the Particulars under Charge 2 of the Citation; and
- b. Conduct Unbecoming a Lawyer as alleged in Charge 3 of the Citation.

19. The Discipline Panel was also provided Books of Authorities of The Law Society of Manitoba and the member. Neither party called any witnesses.

20. Upon formal entry of the guilty plea the Society withdrew Charge 1 of the Citation and withdrew the allegation of Breach of Rule 2.1-1 of the Citation contained in Charge 2 including the portions of the wording in the third and fourth lines of Charge 2 between the words "July 8, 2020" and sentence ending period. Both parties recommended a reprimand, publication, and \$7,500.00 costs.

21. Mr. Fawcett had been assessed and treated on an on-going basis by: the Addictions Foundation of Manitoba (“AFM”), Blue Cross Addictions Management Program, Dr. Richert, psychologist, and Shared Health, Professional Boundaries Program.

22. Mr. Fawcett also provided a positive letter of support from Wendy Stewart, Supervising Attorney, Westman Community Law Centre regarding his work and workplace relationships.

23. Mr. Fawcett has maintained his sobriety since these charges. He provided some very appropriate, apologetic, thoughtful, and insightful comments.

24. Mr. Fawcett’s practicing status is currently inactive and there are no immediate plans to rejoin practice while he currently undergoes treatment. This is a key consideration in determining protection of the public.

25. There has been some evidence of underlying mental health issues for the member. It appears he may have been self-medicating with alcohol and substances in the past. He is now under the care of a physician. The panel recognizes the importance the Society has placed on mental health and substance abuse issues recently.

**Joint Recommendation**

26. The panel recognizes that the joint recommendation was put forth by experienced counsel after lengthy discussions. They were in the best position to assess the appropriate disposition.

27. The caselaw recognizes that a joint recommendation should not be interfered with unless it would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The threshold for this test is very high.

28. The recommendation put forward carefully weighs the circumstances of the charges and the background of the member. It is tailored to take into account that the best indicator of future behaviour is the member's past behaviour. In this case, the rehabilitative steps taken by the member on his own before charges were laid.

29. The panel recognizes the member may have a lifelong struggle with harmful substance abuse. We also note that the member will be left with a permanent record. Should there be any difficulties going forward the potential consequences would increase.



30. The recommendation meets the requirements of specific and general deterrence, rehabilitation, protection of the public, and does not bring the administration into disrepute.

31. It recognizes that the member accepted responsibility at the earliest possible opportunity, is remorseful, was not going to contest this matter, and no one had to testify.

### **Disposition**

32. Based on the admissions, the panel has no difficulty in finding Mr. Fawcett guilty of the amended counts of Professional Misconduct and the Conduct Unbecoming a Lawyer. The admissions show deliberate acts that constitute Conduct Unbecoming a Lawyer, and the breach of Undertaking clearly proves Professional Misconduct. A conviction on the amended counts is required to ensure protection of the public.

33. After carefully considering and weighing all of the facts and submissions in this matter it is the unanimous ruling of this Discipline Panel that The Law Society of Manitoba has met its onus in proving the member committed Professional

Misconduct for breach of Rule 7.2-11 in the Particulars set out in Charge 2 of the Citation and Conduct Unbecoming a Lawyer as alleged in Charge 3 of the Citation.

34. The purpose of The Law Society Disciplinary proceedings are set out in s. 3(1) of *The Legal Profession Act* to uphold and protect the public interest in the delivery of legal services with competence, integrity, and independence. In accordance with Rule 5-96(5) the Committee resolves:

(a) all of the acts or omissions stated in the charge have been proven to the satisfaction of the panel; and

(b) the acts or omissions so proved, the member is guilty of Professional Misconduct and Conduct Unbecoming a Lawyer.

### **Penalty**

35. The member has violated the basic tenets of the legal profession. He acted in his own self-interest and abused his position. This is contrary to the required trust which the public places in the legal profession, and which is essential to maintain confidence in the administration of the system.

36. The panel seeks to preserve the public's trust in the integrity of the legal profession and its faith in the ability of the profession to govern its own members.

The public has the right to expect that those very few members of the profession who violate their ethical responsibilities will no longer be granted the privilege to practice law without restrictions.

37. The guiding principle of sentencing in this matter are both general and specific deterrence. The purpose of The Law Society is to protect the public. Discipline Hearings are not meant to be punitive. Rather they must balance the personal mitigating factors while fulfilling the mandate of The Law Society. Here there are some sympathetic factors which warrant leniency, but they must be tempered with the seriousness of the offence.

38. In this case the breach of the undertaking brings the administration of the legal system into disrepute. This affects the public's confidence and perception in the profession. The member had an obligation to not act in his best interest but rather to take the steps adverse to his personal interest.

39. For these reasons, the Panel of the Discipline Committee has unanimously determined that both parties were appropriate to seek a reprimand in the case at bar there are enough exigencies that the panel has agreed to follow the recommendation put forward by both counsel.

40. It is determined it is appropriate in the circumstances in accordance with Section 72(1) of *The Legal Profession Act* that the member be granted a reprimand. This is reserved for the exceptional circumstances found in this case.

41. It is also ordered that Mr. Fawcett be subject to the following additional conditions:

(a) **Practice Setting.** Any practising certificate that is issued to Mr. Fawcett will be subject to conditions that, subject to authorization for alternative practising arrangements for the Society's CEO or the Discipline Committee, he shall not practise as a sole practitioner and may practise only in a law firm or as an employee of a governmental, regulatory or similar agency or a corporation or similar entity approved by the Society and provided that there shall be at all times a lawyer, acceptable to the Society, within such entity to whom reports that the entity receives of concerns of Mr. Fawcett's behaviour are to be directed. There must be in place an undertaking of this lawyer to forthwith report to the Society upon every report of harassment and of any information that comes to the entity's attention that suggests that Mr. Fawcett has relapsed into the consumption of alcohol or the use of substances described in (c) below.

(b) **Abstinence.** In addition to the conditions and restrictions that may be imposed pursuant to Rule 5-28.2, any practising certificate that is issued to Mr. Fawcett at any time will be subject to the conditions that he refrain from:

- i. the use of any substance that is prohibited by law, including by the *Controlled Drugs and Substances Act*;
- ii. the use of cocaine (whether or not otherwise prohibited by law); and
- iii. the consumption of alcohol.

A report of a positive test result for any such substance pursuant to the monitoring program described below shall be sufficient proof of use of that substance, unless the contrary is proven.

(c) **Treatment.** Any practising certificate issued to Mr. Fawcett will be subject to conditions that he shall:

- i. be under the care of Dr. Ronald Richert or such replacement or other mental health care professional as shall be approved by the Society's CEO. (Dr. Richert or the approved replacement at any time is referred to below as the "Mental Health Professional");
- ii. participate, at his own expense, and comply with a monitoring program arranged by AFM or such other agency as shall be approved by the CEO, which monitoring program shall consist, at a minimum, of the features described in (d) below; and
- iii. meet the reporting requirements described below.

(d) **Monitoring.** The "monitoring program" to which reference is made above shall consist of:

- i. random testing of urine, hair, blood or nails for substances described in (b) above as may be directed by monitoring entity at such times as the monitoring agency shall direct, but no less than once in every two successive calendar months;

ii. reporting directly to the Society by the administrator of the monitoring program of the results of each such test immediately upon completion; and

iii. full cooperation by Mr. Fawcett with the monitoring administrator's requirements.

(e) **Reporting.** The "reporting requirements" to which reference is made above include:

i. Mr. Fawcett shall authorize and direct the Mental Health Professional to provide, at Mr. Fawcett's expense, written narrative reports to the Society immediately following the third and sixth months of the monitoring program and at the end of each following twelve-month period of monitoring, which reports shall contain sufficient information as to Mr. Fawcett's presenting history on each visit, the observations on each such visit, and specifically whether there is any concern of use of substances described in (b) above or of circumstances that cause concern that Mr. Fawcett is at imminent risk of such use and as to whether there is any concern as use of cannabis or any other intoxicants to such an excessive level or such frequency as to have potential disinhibiting effect;

ii. Mr. Fawcett shall authorize the Mental Health Professional to provide such additional reports, consultations and records as the Society may request, which authorizations shall be irrevocable by Mr. Fawcett;

iii. Mr. Fawcett shall provide to the Society the names and address of all of his health care providers involved in treatment of his alcohol use disorder, depression and general health care and authorization to the Society to obtain information from those providers as to his use or risk of use of substances described in (b) above, which authorization shall be irrevocable by Mr. Fawcett; and

iv. Reports from the monitor as described above, which reporting shall be irrevocably authorized by Mr. Fawcett.

(f) **Undertaking.** Mr. Fawcett will be relieved of his Undertakings of October 8, 2020 except for Numbers 8, 9, 10, 11 and 12, which will continue.

(g) **Continuation.** All of these conditions shall remain in effect and effect for a period of two years of practising status and thereafter until they are removed or altered by the CEO of the Society, or upon application to the Discipline Committee.


### **Costs**

42. Both counsel agree an order of costs against Mr. Fawcett is appropriate. The cost provision set out in s. 5-96(8) of the *Rules of the Law Society of Manitoba* is designed to ensure that the member of the profession whose misconduct caused the costs to be incurred bears the responsibility for payment, rather than the innocent members of the Society. Given the joint recommendation, there is no reason to depart from the normal rule and the panel orders costs in the sum of \$7,500.00.

43. According to Section 5-96(8) of the *Rules of The Law Society of Manitoba* this Committee is mindful that the member has personal commitments. As such, we are prepared to allow the timing of the commencement of the costs to be determined by the Chief Executive Officer of The Law Society of Manitoba.

44. Both counsel agree that publication is appropriate. The complainants in this matter will be referred to by way of number. We note under Rule 5-100(1) publication of the order is mandatory.

DATED this 5<sup>th</sup> day of May, 2022.

  
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KATHERINE L. BUETI (Chair)

  
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GERRIT THEULE

  
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MIRIAM BROWNE (Public Representative)