

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**PAOLO GIUSEPPE ANTONIO AQUILA**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

**Hearing Date:** August 21, 2024

**Panel:** Grant Mitchell, K.C. (Chair)  
James McLandress, K.C.  
Maureen Morrison (Public Representative)

**Counsel:** Ayli Klein for the Law Society of Manitoba  
Saul Simmonds, K.C. for the Member

**REASONS FOR DECISION**

1. PAOLO GIUSEPPE ANTONIO AQUILA (“the Member”) was the subject of a Citation from the Complaints Investigation Committee alleging professional misconduct and conduct unbecoming a lawyer. A panel of the Discipline Committee was appointed composed of Grant Mitchell, K.C., (Chair), James McLandress, K.C., (Member), and Maureen Morrison (Public Representative).
2. Ayli Klein represented The Law Society of Manitoba (“the Society”) as legal counsel and Saul Simmonds, K.C. acted as counsel for the Member. Mr. Simmonds admitted jurisdiction and service in a Statement of Agreed Facts. The Member became a member of the Society in 2019 and was called to the Bar in June, 2020. He is not,

and has not been, a member of any other law society. Service of the Citation was admitted and no objection was raised to the constitution of the panel.

3. The Member is employed as an associate at a large Winnipeg firm in the field of real estate and corporate/commercial law. In ██████, he served as coach to a moot team at the University of Manitoba's Faculty of Law and in that capacity, attended a competition in Toronto, Ontario. It was on that trip that the particulars in the Citation occurred.
4. The Citation contains three counts. The Society accepts the Member's plea of guilty to the first charge and on that basis, withdraws the other two counts. The first charge says the Member acted contrary to Rule 6.3-3 of the *Code of Professional Conduct* ("the Code"), which prohibits sexual harassment as defined therein. The Member admits his actions as set out in the particulars amounted to sexual harassment as defined in the *Code*.
5. The Particulars in the Citation, all of which the Member has admitted, state the following:
  - a) "At a cocktail reception following the moot event, you placed your hand on [B's] back while you were standing near her.
  - b) At a karaoke bar following the cocktail reception, you sat next to B and:
    - i. You used your arms to pull her chair towards yours so that they were flush with each other;
    - ii. You placed your hand around the back of B's chair and then moved your hand onto her back;
    - iii. You moved your hand down her back towards her buttocks;
    - iv. You rested your hand on the chair behind B's buttocks;
    - v. You repeatedly caressed your hand on her lower back and buttocks.

- c) In the vehicle ride back to the hotel at which you, B and others involved in the moot were staying, you sat beside B, placed your hand on her thigh and caressed her thigh for the duration of the drive.”
6. B was a student in the moot program whom the Member had been coaching in the time leading up to the competition. The Society interviewed another moot student, C, who attended the event and she observed B's discomfort at the Member's actions, as evidenced by B's body language. B and C were both troubled by the Member's behaviour as set out in the particulars. Mr. Simmonds informed the panel the Member had been consuming alcohol through these parties and although he recalls the celebrations generally, he does not recall the actions as outlined in the particulars, but does not deny them and accepts responsibility for them. Mr. Simmonds informed the panel he had interviewed other witnesses who were present at the cocktail party and the karaoke bar who did not notice the Member's actions, but on behalf of his client he nevertheless does not dispute the particulars.
  7. The parties agree the facts in the particulars amount to sexual harassment and therefore professional misconduct, and that the Member must be disciplined. Where they differ is the form such discipline should take.
  8. The Society takes the position that except in the rarest circumstances, the current law is that a member who commits sexual harassment must be suspended to provide appropriate deterrence, individual and general. Both parties accept there is a considerable range of behaviour that falls within the definition of sexual harassment, from purely oral comments to actual sexual assault.
  9. Counsel for the Society stated these particulars do not constitute sexual assault from its perspective, but would not accept that these facts fall within the lower end of the range. She pointed to the breach of a trust relationship between a student and her coach; the violation of the bodily integrity and dignity of the student and the serious impact this has had on her; the distress caused not only to B but to C, the other

student who witnessed what occurred; and the significant power imbalance between the parties. At the same time, Society counsel acknowledged the remedial actions of the Member (as outlined below) amount to everything a member could be expected to do, having committed this type of professional misconduct, and because of that asked the suspension from practice be for a period of thirty (30) calendar days, the shortest suspension the Society would request in a case of sexual harassment.

10. Mr. Simmonds, on behalf of the Member, submitted 15 documents in mitigation, including:
  - a. A lengthy apology to B for his actions and an apology to the law school, both of which demonstrated genuine empathy and an understanding of the impact of his actions.
  - b. Confirmation the Member had completed training on sexual harassment; professionalism; diversity, sensitivity and Inclusion; stress management, drug and alcohol awareness, and counseling for depression and anxiety.
  - c. Reference letters from his firm's managing partner and from the chair of the executive committee, a female partner who has worked with the Member through the time he has been with that firm; from a non-profit organization where the Member has been a volunteer; from the Member's fiancée; and from the Member's sister. All describe the Member in the most positive terms and state this behaviour was out of character for him. They are all confident the Member is a very low risk to reoffend, and the Society and the panel accept that risk assessment.
11. Informing his firm and his family about these matters must have been very difficult for him. He took all of these remedial steps, including the apologies to B and to the law school and to the Society, promptly after learning of the complaint from the Society, and on his own initiative. The panel and indeed counsel for the Society

recognize that the Member has been a model of remedial actions following a complaint of professional misconduct, and there was nothing more he could have done in the circumstances. The panel only observes this is not a situation where the Member, prior to any complaint being submitted, acknowledges his misconduct with an immediate apology to the student. It was only after learning of the formal complaint that the Member took those commendable remedial actions.

12. Mr. Simmonds also asked the panel to take into account the consequences the Member faces regardless of our disposition. He has faced the shame and embarrassment of reporting the incident to his firm, his fiancée and his family. He will not have the opportunity to serve again on law school programs. He has agreed to pay the costs of this process in the agreed amount of \$4,000.00. Mr. Simmonds argued the actions in the particulars fall at the low end of the spectrum of sexual harassment behaviour.
13. The Member also addressed the panel directly at the end of the hearing and expressed his sincere remorse for his actions, which the panel accepted.
14. Based on the facts and on the mitigating factors, Mr. Simmonds submitted the deterrent required can be achieved with a fine (he suggested the amount of \$5,000.00) and a reprimand, without a period of suspension, and provided five (5) precedent discipline cases where discipline less than suspension had been imposed for sexual harassment. Among those cases was a precedent also filed by the Society, *Law Society of Upper Canada v. Sinukoff* (2011), where the panel accepted a joint recommendation of a reprimand, training, counseling and costs. It was clear in this decision, some 13 years ago, that the panel was uncomfortable with the joint recommendation of a penalty short of suspension, but nevertheless accepted it. The Society relied on the statement near the end of the *Sinukoff* reasons at paragraph 51, where the panel stated:

“... we think sexual harassment should only rarely, if ever, result in a reprimand rather than a period of suspension.”

### **Analysis**

15. The panel has to decide whether the severity of the misconduct, when taking into account the mitigating factors, brings this matter into that small category of rare cases where discipline less than suspension is adequate. Both parties accept that here we are focused on general deterrence and not individual deterrence. This Member is unlikely to reoffend whether we order suspension or not. The issue is whether a penalty less than suspension will have the desired deterrent effect on other lawyers, and whether a penalty less than suspension sufficiently expresses denunciation of this offence for the preservation of the public's confidence in the integrity of the profession.
16. The panel must consider the general sentencing principles that apply to discipline cases, as set out in the *LSM v. Nadeau* case filed by the Society:

“The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.”

“The purpose of the Society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.”

“Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of the injury, the lawyer's blameworthiness and the penalties that have been imposed previously for similar misconduct. In assessing each of the factors the discipline hearing panel focuses on the offence rather than on the offender and

considers a desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the restitution if any made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state."

17. *Nadeau* also cites the so-called "*Ogilvie*" factors, which Society counsel addressed in her submission:
  - a) "The nature and gravity of the conduct proven;
  - b) The age and experience of the respondent;
  - c) The previous character of the respondent, including details of prior disciplines;
  - d) The impact upon the victim;
  - e) The advantage gained or to be gained by the respondent;
  - f) The number of times the offending conduct occurred;
  - g) Whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
  - h) The possibility of remediating or rehabilitating the respondent;
  - i) The impact on the respondent of criminal or other sanctions or penalties;
  - j) The impact of the proposed penalty on the respondent;
  - k) The need for specific and general deterrence;
  - l) The need to ensure the public's confidence in the integrity of the profession; and

- m) The range of penalties imposed in similar cases.”
18. Most of these factors are relevant in this case. In the list above, a), d), k) (although general deterrence only), and l) are all aggravating factors in the consideration of sentence. On the other hand, c), g), h), i), and j) all mitigate the penalty. The remaining factors are either neutral or inapplicable in this case. The factors a), d), k) and l) are of particular importance to the panel relating to the seriousness of the offence and the need for general deterrence. The mitigating factors are also important and are conceded by the Society, prompting them to ask only for the minimum suspension available.
  19. It is acknowledged by both sides that sexual harassment is serious misconduct, that the jurisprudence demonstrates this misconduct attracts greater sanctions than it did 10 or 20 years ago, and that sexual harassment is all too common in legal practice but only a small percentage of those who are victims choose to make formal complaint. The panel finds the likelihood of being caught, which is usually the greatest deterrent, is not present here, meaning effective general deterrence can only be achieved through the severity of the consequences. The principle is that where a perpetrator faces only a small chance of being held to account, it is only when the consequences of being caught are severe that members will refrain from committing the misconduct; the risk is not worth it.
  20. The panel particularly commends B for submitting her complaint when she had nothing to gain personally and everything to lose in doing so. It is only with the courage and commitment of students like B that the Society can be successful in eradicating this misconduct.
  21. Rule 6.3-3 of the *Code* defines sexual harassment as, “an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests.” Further, “[t]he intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be



unwelcome.” The Rule goes on to describe examples where sexual harassment may occur and examples of what can constitute sexual harassment. Of note for this case:

- a. *Commentary [1](a)* – “when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;” and
  - b. *Commentary [1](g)* – “when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.”
22. *Commentary [2]* offers a non-exhaustive list of examples that constitute sexual harassment, including
- a. *Commentary [2](h)* – “sexual flirtations, advances, propositions, invitations or requests;”
  - b. *Commentary [2](i)* – “unsolicited or unwelcome physical contact or touching;”
  - c. *Commentary [2](k)* – “unwanted contact or attention...”
23. The power imbalance contemplated by *Commentary [1](g)* is inherent in the relationship between a moot coach and a student. The coach has the ability to profoundly impact the student’s career. The coach must always recognize the vulnerability of the student and must therefore refrain from engaging in any conduct that could reasonably be interpreted as sexually harassing behaviour. As the Rule says, the lawyer’s intent is *not* determinative; rather, how the conduct is perceived by the victim is critical. A mere lack of objection by the victim or even the *appearance* of consent are not sufficient to overcome the power imbalance. The onus is on the lawyer to ensure nothing sexual happens in this context. It is a “no go” zone, and one where the Society must rigorously protect the rights and dignity and bodily


integrity of students. This is one of the reasons why the panel finds that these incidents do not fall at the low end of the spectrum of sexual harassment.

24. In terms of avoiding alcohol at law school events, this case provides an important lesson for the profession. The profession has numerous events where alcohol is offered as part of the festivities. Although abstinence would be the most prudent course, we recognize it is often less awkward to have a drink. Any lawyer who decides to have too much to drink at such an event is creating a risky situation (leaving aside the concern for those who will operate a vehicle after the event). For our profession, over-consumption of alcohol when misconduct ensues can be an aggravating factor not a mitigating factor, and may result in the imposition of greater discipline than might otherwise be the case. This is part of the message of general deterrence.
25. This panel embraces the principle from *Sinukoff*, filed by both parties, that “sexual harassment should only rarely, if ever, result in a reprimand rather than a period of suspension.” Because of the aggravating factors present here, this is not one of those rare cases, despite the commendable mitigating efforts of the Member and eloquent submissions of his counsel. We do not believe the penalty proposed by Mr. Simmonds on behalf of the Member (fine plus reprimand plus costs) would have the necessary deterrent effect for the profession generally, nor would it sufficiently express the denunciation that public confidence in the legal profession requires. Despite the recognition among lawyers that in a professional context a reprimand is far more than “a slap-on-the-wrist”, we have to be mindful the public may not see it that way. Similarly, the public could reasonably view a fine, particularly one of the amount suggested, as a lawyer simply “buying their way out of trouble.” To adequately protect the public, the profession, its students, clients, and employees, a suspension is necessary.
26. For all of the above reasons, this panel finds the Member’s offence requires a suspension, and accepts the Society’s recommendation of thirty (30) days duration.

The panel also accepts the joint recommendation that costs be ordered in the amount of \$4,000.00. The Member will have time to pay the \$4,000.00 costs on terms as shall be negotiated between the Member and the Society, as will the dates on which the suspension will be served.

DATED this 17<sup>th</sup> day of September, 2024.

  
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Grant Mitchell, K.C.

  
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James McLandress, K.C.

  
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Maureen Morrison