

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND IN THE MATTER OF
AN APPLICATION TO RESIGN WHILE FACING CITATIONS BY
CURTIS FAIRCLOUGH,
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA

RESIGNATION COMMITTEE REPORT

RESIGNATION COMMITTEE:

Brett Code, QC, Chair
Robert Harvie, QC, Committee Member
Glen Buick, BA, Committee Member

COUNSEL:

Shanna L. Hunka and Heather Spicer, for the Law Society of Alberta
J. Patrick Peacock, QC, for the Student-at-Law

STUDENT-AT-LAW:

Curtis Fairclough

Introduction

1. Mr. Curtis Fairclough is now a sole practitioner in Los Angeles, California. At all material times, he was a student-at-law at a Calgary law firm.

Citations

2. Mr. Fairclough faced two citations, namely:
 - a. that he conducted himself in a manner that brought discredit to the profession and that such conduct is deserving of sanction; and

- b. that he failed to be candid with the Law Society and others and that such conduct is deserving of sanction.

Application to Resign

3. By application dated November 21, 2014, Mr. Fairclough applied to the Benchers of the LSA to resign as a Student-at-Law pursuant to Section 61(1) of the *Legal Profession Act*.
4. Section 61 applies to members and permits them to apply to resign as members at any time during proceedings related to their conduct.
5. Section 49(4) states that Part 3 of the *Legal Profession Act*, which includes s. 61, applies to students-at-law.
6. Section 49(5)(a) states that, for the purpose of applying s. 49(4), references to a member include a student-at-law.
7. Also for the purpose of applying s. 49(4), s. 49(5)(b) states that references to disbarment of a member shall be read as references to the termination of the registration of the student-at-law.
8. It was common ground during the application before us that Mr. Fairclough's application to resign as a student-at-law was the equivalent of an application to resign by a member whose resignation is deemed under the *Legal Profession Act* to be a disbarment.
9. In support of his application, Mr. Fairclough tendered, with the consent of counsel to the LSA:
 - a. the requisite Statutory Declaration;
 - b. the requisite Undertakings; and
 - c. a Statement of Admitted Facts.
10. The application was held in public.

Facts

11. Mr. Fairclough's Statement of Admitted Facts had been reviewed and essentially approved by the LSA prior to the application. LSA counsel assured us (as far as she is able to, being counsel of the prosecuting party) that it contained a fair representation of the essential evidence that LSA was going to lead at the scheduled Hearing for which she

had been preparing, and that it adequately and fairly presented the essential evidence for our adjudication of the application to resign.

12. The Statement of Admitted Facts was signed by Mr. Fairclough and dated November 24, 2014. That document was entered as Exhibit 6D. It contains names that, if rendered public, might have compromised the confidentiality or the privacy not only of the victim of Mr. Fairclough's misconduct but also of certain other individuals who knew of the events in question. It also contains the name of Mr. Fairclough's former firm. Upon the motion of the Resignation Committee, counsel agreed on a revised version that replaced those names with initials and that, for better protection of the victim, replaced her actual initials with the appellation "XX". We expressed extreme concern for the confidentiality of the victim. In order to try to assure us that her confidentiality would be protected, counsel for the LSA showed XX the redacted version of the Statement of Admitted Facts. We were told that she agreed that it likely protected her confidentiality and privacy sufficiently and agreed that it could be made available to the public. The result of that process of ensuring confidentiality and privacy is the Statement of Admitted Facts that is appended to this Report as Appendix 1.
13. Exhibit 6D itself should not be made available to the public, other than perhaps by Order of the Benchers or of a Court of competent jurisdiction.
14. In terms of describing the facts involved here, we can do no better than the contents of the Statement of Admitted Facts. It is integral to this decision and should be read in whole as part of it.
15. Intoxicated after a firm event, Mr. Fairclough took a photograph of a female co-worker, XX. He did not seek XX's consent; the photograph was unauthorized. It was also inappropriate and very unfortunate for XX, exposing as it does those parts of her body that are undoubtedly private.
16. After taking the photograph, Mr. Fairclough then circulated it to two male co-workers. Further, in a text message sent to one of his male co-workers, he claimed, falsely, to be having sexual relations with XX.

17. The original copy of the photograph remains sealed. Copies were shown to us, and we returned them to LSA counsel to be either sealed or destroyed. The photograph was not made an exhibit in the proceedings. It is not to be made available to the public except perhaps upon application to the Benchers or by order of a Court of competent jurisdiction.
18. Eventually, the firm had an independent organization conduct an investigation into the events that transpired on the evening in question, a forensic investigation was employed to recover the impugned photograph, and documentation was sent to the LSA that caused the LSA to open an investigation under Part 3 of the *Legal Profession Act*.
19. In sum, at each stage of the various investigations, Mr. Fairclough did not tell the truth to his firm, to the independent investigators, or to the LSA. The truth eventually came out as the result of a thorough investigation and, faced with the truth, Mr. Fairclough admitted his misconduct.
20. Through the process, Mr. Fairclough's employment was terminated, his Principal would not complete the requirements for Articles of Clerkship, he left the jurisdiction, and he set up a legal practice in California, where he had previously been a member of the bar.
21. In his Statement of Admitted Facts, Mr. Fairclough says that he is deeply apologetic to XX. When asked by us whether he had actually apologized to her, he said that he had not.

Analysis and Conclusion

22. On the facts admitted, the conclusion is obvious. We unhesitatingly grant the application, on the conditions set out below.
23. We had inquired as to whether the matter should be referred to the Attorney General. We were told that XX had already done so, and that the Executive Director had also done so during the investigation. We therefore do not make such a referral a condition of the application.
24. A preliminary form of Notice to the Profession was shown to us. We asked several questions and raised several issues regarding that proposed Notice. During an

adjournment, counsel agreed on a revised form of Notice that is satisfactory to us. The Executive Director has some remaining discretion as to the form and content of that Notice, and we do not purport to restrict that discretion. A Notice to the profession satisfactory to the Executive Director must be published.

25. Costs were disputed. We decided that a portion of the actual costs must be paid as a condition of granting the resignation application. Mr. Fairclough must therefore pay costs of approximately \$12,787.87, which amount will be finalized and approved by the Resignation Committee at a later date. Mr. Fairclough asked for 12 months to pay. LSA counsel consented to that delay, and we agreed.
26. Also with regard to costs, Mr. Fairclough is required to pay the full costs of the investigation, in the amount of \$23,643.09 before he makes any application for reinstatement, that is, payment in full is a condition to the application and not merely to the granting of any such application.

Signed as of the 18th day of December, 2014

Brett Code, QC

Robert Harvie, QC

Glen Buick, BA

Appendix 1
IN THE MATTER OF THE *LEGAL PROFESSIONAL ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
CURTIS FAIRCLOUGH
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

I, Curtis Fairclough admit the following facts to be true.

Introduction

1. I am a California active licensed lawyer. I have held the status of active from 2003 to present. I am also a Chartered Financial Analyst (CFA). I obtained a position with ABC Law Firm with WJ as my principal.
2. I completed my term of articles on April 18, 2012.
3. My current status with the Law Society of Alberta is as a student-at-law.

Citations

4. On May 5, 2012, the Conduct Committee Panel referred the following conduct to Hearing:
 - a. It is alleged that you conducted yourself in a manner that brought discredit to the profession and such conduct is deserving of sanction.
 - b. It is alleged that you failed to be candid with the Law Society and others and such conduct is deserving of sanction.
5. The conduct can be summarised as follows:
 - a. I took an inappropriate photograph of a very intoxicated female co-worker without her knowledge or consent and forwarded it to two others.
 - b. I was not candid with my former law firm, investigators and the Law Society.

Facts

6. I attended a securities department event at a restaurant on April 19, 2012 (“the Securities Retreat”) together with many members of the department. I left the function with XX, a female employee. Both of us were very intoxicated when leaving the firm event together.
7. Later in the same evening, I took a picture of XX with my firm-issued BlackBerry. The digital picture shows that XX is not conscious and that she is partially naked.
8. I forwarded a copy of this digital image of XX to co-workers, DS and KB at the time. I also sent text messages to KB in which I claimed, in an inappropriate joking or cavalier manner, to be having sexual relations with XX. After this exchange KB received the photo of XX.
9. On May 1, 2012, I also had a message exchange with another co-worker, GN, a firm staff member in the IT department, in which I claimed, in an inappropriate joking or cavalier manner, to have had sexual relations with XX when she spent a night at my place just over a week prior.
10. The comments that I made to both KB and GN as set out above were a form of inappropriate joking, fantasy, bragging and male bravado and not to confirm that we actually had sexual relations. XX and I did not have sex.
11. My employment was terminated on May 16, 2012. It was articulated that termination had nothing to do with any photo. However, in the termination interview, I was asked to comment on a photo taken at the Securities Retreat of a fellow firm staff member which was shared with other members of the firm. In response, I told them that I had been charged with putting a female intoxicated staff member into a cab and giving the cab driver directions to make sure she got home. I said that I was unaware that any photo had been taken, but that any photo would not have been inappropriate.
12. Management questioned XX about the photograph and she was unaware of any photograph. The firm retained Grant Thornton to conduct an investigation into this matter. In response to the Grant Thornton investigative report, I responded that I was under the influence of alcohol and that I did take a picture of XX which was of a non-sexual nature and sent it to a friend to indicate she was safe. I asserted there was nothing sexual about the picture.
13. I responded to the formal complaint to the Law Society also advising that XX had spent the night at my condo after she had passed out as she was very intoxicated. I indicated again that there was nothing sexual about the picture and that I had sent it along to a colleague.
14. In saying that there was no exposure or nudity, I aligned my account of the photo to the Law Society with the account of WG, my direct supervisor and department boss. WG described taking only a “quick look” at the photo. His account was made by him to Grant Thornton, and is outlined in the copy of the Grant Thornton report that was provided to me. There were

discrepancies with this account to others with regard to the description of whether the photo contained any nudity or exposure of XX.

15. Without further inquiry, and without speaking to WG, I gave preferential treatment to the description of WG, even though he was someone who had only glanced at the photo on a small Blackberry screen late at night in a dark bar at a social drinking event. A better, fuller, and, as it turns out, more accurate description was provided by the others including those who were the actual recipients of the photos including KB and DS. KB was not at the Securities Retreat. DS spoke to me the next day and warned me to delete this inappropriate photo from my phone.

16. DS received the digital photograph and showed it to three other firm lawyers who were with him still at the restaurant on the evening in question.

17. KB also received the digital photograph that night and forwarded it to MR, another colleague.

18. Shortly after my termination, I removed the media card from the BlackBerry in order to retain contacts and personal matters. I did not tell JR who was supervising my termination, of this removal. I later provided it to the Law Society investigators.

19. At the Law Society investigative interview, I denied that the picture was inappropriate and denied that XX was naked. I asserted that all of the people, including the direct recipients of the photo, who said otherwise, were mistaken.

20. I further advised that I had deleted the picture from the phone within a short period of time, or possibly the next morning. This was true.

21. During their investigation, the Law Society investigators retained URGENTIS to conduct a forensic examination on the BlackBerry media card.

22. On September 30, 2012, URGENTIS recovered a deleted digital image of XX from the media card. A copy of this photo is attached to these Facts and is contained in a sealed envelope to be opened only if application is made to the Benchers by an interested party, such as the Law Society, XX or myself.

23. My principal WJ did not complete the documents necessary for me to complete my admission to the bar of the Province of Alberta and enrollment as a member of the Law Society of Alberta.

24. I am deeply apologetic to the victim, XX for my inappropriate actions and also for failing to be candid to the firm, investigators and to the Law Society. I admit that this is conduct that brings discredit to the profession.

25. I acknowledge and understand that if a hearing panel found me guilty of the citations upon the facts as set out above, that the likely sanction that would be imposed would be the termination of my status as a student-at-law.

26. I have been living and practicing law in California since early 2013. In order to avoid a lengthy hearing into the merits of my conduct, avoid inconveniencing a significant number of witnesses, avoid embarrassing and exposing XX further, and to bring this matter to a conclusion, I have elected to apply to resign as a student of the Law Society pursuant to section 61 of the *Legal Profession Act*.

Admission of Facts and Guilt

27. I admit as facts the statements herein contained in the Statement of Admitted Facts for the purpose of these proceedings and in support of my resignation application.

Dated: November 24, 2014

CURTIS FAIRCLOUGH