

THE LAW SOCIETY OF MANITOBA

ADMISSIONS AND EDUCATION COMMITTEE (TRUST SAFETY APPEALS SUB-COMMITTEE)

IN THE MATTER OF:

MEMBER C

Appellant

AND IN THE MATTER OF:

A DECISION OF THE DEPUTY CHIEF  
EXECUTIVE OFFICER  
As delegate of the Chief Executive Officer  
Dated May 21, 2024

PANEL:

Serena Ehrmantraut, Chairperson  
Leah Leibl, Practicing Member

HEARING DATE:

June 11, 2024

APPEARANCES:

Ayli Klein, for the Law Society of Manitoba  
Saul Simmonds, for Member C

*Appeal pursuant to Law Society Rule 5-42.3(1)*

*Appeal based on written and oral submissions pursuant to the Trust Safety Program Guidelines and the Trust Safety Program Appeal Guidelines*

## REASONS FOR DECISION

### **I. INTRODUCTION AND REGULATORY FRAMEWORK:**

1. By Notice of Appeal dated May 22, 2024, Member C appeals a decision of the Law Society's Chief Executive Officer, by her delegate, dated May 21, 2024, revoking Supervisor A's status as Trust Account Supervisor ("TAS") for Member C.
2. This appeal is brought before the Panel under the *Rules of the Law Society of Manitoba* (Part 5, Division 4 – Financial Accountability) (the *Rules*). The Panel was duly constituted under Rule 5-42.3(1) and (2) and the associated *Trust Safety Program Guidelines* (the "TSP Guidelines") and the *Trust Safety Program Appeal Guidelines* (the "TSPA Guidelines").
3. Pursuant to the *Rules* 5-42.3(3) and the TSPA Guidelines, Member C requested the Appeal proceed by way of an expedited oral hearing. A Record and written submissions of the parties (collectively the "Appeal materials") were submitted. The Record consisted of accounting records, e-mails, letters, and memorandums.
4. The hearing took place virtually on June 11, 2024, with all parties, including Member C, present.
5. Whether or not Supervisor A should remain as the Designated Trust Account Supervisor (d-TAS) for Member C is the focus of the Appeal. The decision of the Panel to dismiss the Appeal was provided to the parties on June 17, 2024, with written reasons to follow. These are those reasons.

### **II. JURISDICTION:**

6. The amendments to Part 5, Division 4 of the *Rules* creating the TSP came into effect on April 1, 2019. The TSP requires approval by the Law Society of Manitoba (LSM) of a TAS for every firm maintaining a trust account, which, in this context includes a sole practitioner such as Member C. The LSM may also approve another practicing member as a d-TAS, which, in this context was Supervisor A.
7. The LSM's mandate for protection of the public in the delivery of legal services is inherent in Part 5 of the *Rules* (of which Division 4 "Financial Accountability" and the TSP requirements are a part) and the LSM's entire regulatory scheme.
8. The *Rules* relating to financial accountability contain various elements, all of which are designed to ensure lawyers maintain trust accounts and associated records in a

manner that can be easily examined by the Audit Department. Record keeping and reporting are critical elements that allow the Audit Department to do its work.

9. One element of the LSM's financial accountability requirements, monthly reconciliation of the books of original records (pooled trust and individual client trust accounts) with the bank accounts, is designed to ensure that discrepancies can be quickly noted. These processes prevent mistakes, catch errors, and ensure accountability for money that belongs to clients. The TAS plays a critical role within the TSP. The TAS is responsible for supervision of the monthly reconciliations as a necessary part of the accountability to the LSM in its public protection role.
10. Both parties agreed that the Panel had jurisdiction over the Appeal.
11. It should be noted that at the conclusion of the hearing, before the decision of the Panel was to be rendered, a conflict was identified by the parties with the public representative member of the Panel. Counsel for Member C advised, after a weeklong adjournment for instructions, that he was prepared to proceed with the decision of the Panel with the two remaining Panel members.

### **III. STANDARD OF REVIEW:**

12. Both parties agree that the appropriate standard of review for this Appeal falls between the "correctness" and "consideration afresh" standard. The Panel concurs with counsel for the Law Society that this Appeal cannot succeed on even the most rigid standard of review.

### **IV. FACTUAL BACKGROUND:**

13. The facts reflected in the Appeal materials are relatively straightforward and are mainly uncontentious.
14. Member C is member of the LSM since their call to the Bar in 2017. They are a sole practitioner primarily handling real estate matters, with limited services provided in the areas of criminal law, family law, and immigration.
15. Member C opened a trust account in June 2017 and filed their annual trust account report on August 7, 2018, for the period between June 1, 2017 – June 30, 2018. As a result of some concerns with this report, the LSM attended to their office on October 15, 2018 to start a new firm audit. This audit continued through to November 2019. During this time, Member C's application for TAS was pending completion of the audit.

16. On May 11, 2020, the Director of Audit advised Member C that their application for TAS was denied for several reasons; namely failing to comply with record keeping and reporting requirements along with inaccurate, inconsistent, and misleading information provided to the LSM about the state of their records. At this point, Member C was provided with options, including having another individual apply to be their d-TAS. The same day, the LSM was contacted by Supervisor A inquiring about applying to be the d-TAS for Member C. On June 2, 2020, Supervisor A was approved as d-TAS for Member C.
17. On [date], the LSM issued a Citation against Member C alleging breaches of provisions of *The Legal Profession Act* and the *Rules*. The breaches related to trust and accounting rule violations and allegations of professional misconduct for failure to practice with honour and integrity.
18. Member C plead guilty to the charges and a decision was rendered on [date]. The full facts and details of that decision were included in the Record at Tab 4. In short, Member C was required to produce a client file to the LSM. It became apparent that prior to doing so, they engaged their client in signing falsified documents including statements of account. Some of these documents were also backdated and demonstrated that payments had not been properly deposited into trust. When the client requested receipts for payments, Member C attempted to avoid providing those indicating they would have to charge taxes if they did. This was an attempt to avoid tax implications.
19. In addition to the consequences issued by the Discipline Panel, the LSM Deputy CEO (as delegate for the CEO) advised Member C that Supervisor A's status as d-TAS was being revoked. Further, the Deputy CEO advised that having another d-TAS was not an available option for Member C. Rather, their options were to close their trust account(s) and join a firm that has a TAS in place already, or carry on a practice that does not involve the handling of trust money.

**V. POSITION OF THE PARTIES:**

20. Counsel for the LSM submits that the Appeal should be dismissed. She points out that the mandate of the LSM includes protecting the public's money that is entrusted to lawyers and the ability of practicing lawyers to handle trust money is a privilege and not a right. Further, the strict rules around trust accounting and record keeping are an essential element of the TSP and "rigorous adherence" is required. She argues that not only did Member C fail to comply with the rules, they attempted to avoid tax implications, and engaged their client in their efforts to mislead the LSM, all while under the supervision of Supervisor A as their d-TAS.

21. Counsel for Member C argues that the Appeal should be allowed, and Supervisor A should be able to remain as d-TAS for Member C, maintaining the current arrangement or with conditions, if the Panel felt it necessary. This is on the basis that, other than the matters for which Member C was disciplined, there have been no other infractions or issues under Supervisor A's supervision. He argues that dismissing the Appeal would result in a secondary punishment to Member C and was already contemplated in the Reasons for Decision of the Discipline Committee. Member C has been engaged with a therapist, has a new accountant they are working with, and has no prior discipline history.

**VI. ANALYSIS:**

22. The Panel carefully considered all of the Appeal materials and submissions of the parties, along with the relevant sections of the TSP Guidelines, TSPA Guidelines, and the *Rules*.
23. Member C, from the very early days of opening their trust account(s), ran into issues with reporting and record keeping with the LSM Audit Department. The LSM Director of Audit over the course of a year and a half, spent a significant amount of time and resources to assist Member C in proper accounting and record keeping. Despite those efforts, there were continued issues with their accounting practices and they engaged in unprofessional behaviour with the Director of Audit. This record of behaviours resulted in their own application as TAS being denied.
24. Then while under the supervision of their d-TAS, the Citation was issued which alleged serious breaches of the *Rules* and TSP Guidelines, to which Member C plead guilty. The facts underlying those breaches are serious and appear to be at heart of the decision of the Deputy CEO in revoking the d-TAS.
25. The Panel considered all of the Appeal materials, and the mandate of the LSM to protect and safeguard the public, and with even the slightest deference to the decision of the Deputy CEO, the Panel is of the view that it would be a considerable risk to allow Supervisor A to continue as d-TAS.
26. The demonstrated history of non-compliance, even while under supervision, speaks to the continued risk to the public if Member C were allowed to continue practice with a d-TAS. Their history of unprofessional behaviour with the Director of Audit and engagement of their client in their breaches of the *Rules* speaks directly to their ability to exercise good judgment.

27. Lawyers have a duty to act with integrity and to uphold the standards and reputation of the legal profession.<sup>1</sup> There are privileges that come with the practice of law, namely trust accounts, which are not a right and is why such strict rules are in place for protection of the public. When those rules are contravened, it poses a risk that must be mitigated for the protection and safety of the public.

## **VII. CONCLUSIONS AND DISPOSITION**

28. As a result, the Panel accepts the decision of the Law Society's CEO (by her delegate the Deputy CEO) to revoke Supervisor A's position as d-TAS for Member C. We hereby dismiss the appeal.
29. The Panel is sympathetic to the fact that this decision will have an impact on Member C and their practice. The Panel would recommend that Member C continue with therapy, take steps such as further education around accounting practices, seek out mentorship within the legal community, and should they be granted a TAS application in the future, employ the use of a Chartered Professional Accountant.
30. The Panel wishes to thank the parties for their cooperation in preparation and presentation of the Record, written and oral submissions, all of which were of great assistance to the Panel.

DATED this 2<sup>nd</sup> day of July, 2024



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Serena Ehrmantraut – Panel Chair



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Leah Leibl – Practicing Member

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<sup>1</sup> *The Law Society of Manitoba Professional Code of Conduct*, s. 2.1-1 and 2.1-2