

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**CHAMAN BADOHAL**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

**Hearing Date:** October 3, 2023

**Panel:** Roberta Campbell, K.C. (Chair)  
Christopher Lange  
Kenneth Molloy (Public Representative)

**Counsel:** Ayli Klein for the Law Society of Manitoba  
No Appearance for the Member

**REASONS FOR DECISION**

**Introduction**

1. Chaman Badohal (the "Member") is a member of The Law Society of Manitoba (the "Society"), having been called to the bar on June 20, 2019.
2. The Member is charged with 14 counts of Professional Misconduct which are detailed in an 11-page Citation dated February 21, 2023. The Member was substitutionally served on May 9, 2023, with the Order for Substitutional Service and the Citation dated February 21, 2023. Despite being substitutionally served on May 9, 2023, with the Citation, on June 8, 2023, with the Notice of Hearing and September 26, 2023, with additional documents, the Member did not attend the hearing nor did Counsel appear on her behalf.

3. Section 71(1)(6) of *The Legal Profession Act, CCSM c. L107* (the "Act") permits a Panel of the Discipline Committee to proceed in the absence of the member where the member charged has been given notice of the hearing in accordance with the rules. The section states the following:

If the member charged has been given notice of the hearing in accordance with the rules, the hearing may proceed in the member's absence, and the panel may, without further notice to the member, take any action it could have taken with the member present at the hearing.

4. At the commencement of this Discipline Hearing Ms Klein, Counsel for the Society, submitted that the Member was properly served by email as per the Order for Substitutional Service, with all required documents and that she had not received any "bounce back" or "message undeliverable" reply. She then asked that the hearing proceed despite the Members failure to attend.
5. Based on those submissions, the hearing convened in the absence of the Member and a quorum was declared pursuant to sub-Rule 5-93(7) of the *Rules of the Law Society of Manitoba* (the "Rules").
6. Counsel for the Society entered 13 counts of Professional Misconduct against the Member out of the 14 set out in the Citation and asked the Panel to convict on those counts, which I shall reproduce below.
7. Counsel for the Society stayed the charge indicated in the Citation at paragraph 13.
8. Counsel for the Society entered her own affidavit affirmed October 3, 2023, confirming that the Member was served as per the Order for Substitutional Service.
9. Counsel for the Society also advised that the Member had been made aware of the three members of the Panel. As the Member has provided no response, there has been no objection to the composition of the Panel for any reason. She also confirmed that the Member is not a member of a Law Society in any other jurisdiction.

10. No Statement of Agreed Facts was filed. Counsel for the Society submitted that we may proceed on affidavit evidence under Rule 71(1)(5) of the Act, which states:

The rules of evidence that apply in a civil proceeding in the Court of King's Bench apply at the hearing. But an affidavit or statutory declaration is admissible and, in the absence of evidence to the contrary, is proof of the statements in it.

11. The Panel was satisfied that the hearing could proceed in the absence of the Member and on affidavit evidence presented at the hearing.

### **Evidence Tendered by the Society**

12. Counsel for the Society entered as exhibits the following affidavits:
  - a. Affidavit of Christopher Donaldson affirmed September 26, 2023;
  - b. Affidavit of Deborah Metcalfe affirmed September 18, 2023;
  - c. Affidavit of Noelia Bernardo affirmed September 26, 2023;
  - d. Affidavit of GST affirmed September 15, 2023;
  - e. Affidavit of PSB affirmed September 15, 2023;
  - f. Affidavit of MA affirmed on September 11, 2023; and
  - g. Affidavit of Ayli Klein affirmed October 3, 2023.
13. Given the number of counts alleged, it shall be helpful to address the specific evidence tendered by the Counsel for the Society in relation to each count.

**Count 1: After providing your Undertaking to the Law Society on March 16, 2021 that you would "accept no new client matters or retainers, or open any new client files that involve the receipt or disbursement of trust money", you failed to comply with that Undertaking, and you thereby acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to carry on the practice of law and discharge all responsibilities honourably and with integrity.**

14. On March 16, 2021, the Member provided to the Society her Undertaking that she would not accept new client matters or open new client files that involved the receipt or disbursement of trust funds (the "Undertaking").
15. The Undertaking required that the Member provide a list of her active clients.

16. On October 19, 2021, the Society received a call from a lawyer who was inquiring about the Member because he was aware of a September 7, 2021 discipline decision against the Member. As he was dealing with the Member on a real estate transaction, he wanted to know when her suspension would commence. The real estate matter had developed within the last few months.
17. The Member was involved in this real estate transaction that was opened after March of 2021, which might involve the receipt and disbursement of trust funds.
18. On or about November 1, 2021, a lawyer called the Society to report that they had received a trust cheque from the Member in the amount of \$488,242.52 on another real estate transaction; that cheque had been rejected due to Non-Sufficient Funds. Ms Deborah Metcalfe, an Auditor-Inspector for the Society, followed up on this matter with the lawyer and requested copies of the returned cheque or any advice from the bank on the returned cheque, which was provided.
19. During the investigation, it was discovered that the Member had opened up a second trust account and had been handling trust monies contrary to the Rules of the Society and the Undertaking. According to the Society's records, the Member's sole trust account was held at TD Canada Trust, under account number ending in 4662 however the returned cheque was written on an account ending in 9139. The Member was operating a second trust account at TD Canada Trust unknown to the Society, under an account ending in 9139.

**Count 2: While and in connection with a real estate transaction involving your husband SB and a property located in Winnipeg, you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to carry on the practice of law and discharge all responsibilities honourably and with integrity.**

20. On April 1, 2020, the Member's husband SB was the subject of a default judgment in the total amount of \$150,562.15 obtained by WELI, a truck leasing company.
21. At the time that the judgment was obtained, Mr. B was the registered owner of a property located in Winnipeg.
22. On or about April 20, 2020, Mr. B transferred that property to RK, an

individual known to him, for consideration of \$1.00.

23. The Member, through her firm Focused Law Office, prepared the Land Transfer documents and provided her waiver regarding the Homestead Rights of the property.
24. WELI filed a Statement of Claim contesting the transaction and on March 30, 2021, the Court of Queen's Bench (as it then was) issued a Judgment finding that the transaction had been fraudulent. The Court ordered that the Registrar of the Winnipeg Land Titles Office reinstate Mr. B as the registered owner of the property.

**Count 3: While and in connection with your representation of GST on a family law matter, you acted contrary to Rule 3.2-1 of the *Code of Professional Conduct* in that you failed to provide service that was courteous, thorough, prompt, competent, timely, conscientious, diligent, efficient and civil;**

**Count 4: While and in connection with your representation of GST on a family law matter, you acted contrary to Rule 5-44(1)(b) of the *Rules of the Law Society* in that you failed to deposit trust money into a pooled trust account as soon as practicable after its receipt;**

**Count 5: While and in connection with your representation of GST on a family law matter, you acted contrary to Rule 3.5 of the *Code of Professional Conduct* in that you failed to preserve client property;**

**Count 6: While and in connection with your representation of GST on a family law matter, you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to carry on the practice of law and discharge all responsibilities with honour and integrity;**

25. GST retained the Member in May 2021 regarding a divorce matter. The Member took a retainer of \$500.00 in cash from Mr. T, contrary to the Undertaking, and the original copy of his marriage certificate. The \$500.00 in cash was never deposited into a trust account and Mr. T's marriage certificate was never returned.
26. In November of 2021, Mr. T spoke to the Member on the phone asking for an update on his matter. He was advised by the Member that his file had been "approved" and that she would file documents in court. The Member never filed any documents in court on behalf of Mr. T.

**Count 7: While and in connection with your representation of PSB on an immigration matter, you acted contrary to Rule 3.2-1 of the *Code of Professional Conduct* in that you failed to provide service that was courteous, thorough, prompt, competent, timely, conscientious, diligent, efficient and civil;**

**Count 8: While and in connection with your representation of PSB on an immigration matter, you acted contrary to Rule 5-44(1)(b) of the *Rules of the Law Society* in that you failed to deposit trust money into a pooled trust account as soon as practicable after its receipt;**

27. The Member was retained by PSB in January 2020 to complete a super visa application with Immigration, Refugees and Citizenship Canada ("IRCC") for his parents.
28. On January 6, 2020, the Member sent an email to the wife of Mr. B requesting a \$250.00 retainer, which Mr. B's wife sent to the Member by transfer on January 8, 2020. The \$250.00 retainer was never deposited into the Member's trust account nor was a statement of account ever provided to Mr. B.
29. The Member submitted the application on January 13, 2020, but reported no progress to Mr. B about the status of the application. Mr. B followed up frequently, and the Member repeatedly advised him that processing was "slow" due to the COVID-19 pandemic.
30. In early 2022, Mr. B was advised by an individual at the Member's law firm that her license had been suspended. Mr. B and his wife began trying to contact IRCC directly, but they were unable to access the application until they had authorized a new representative. Mr. B could not do that until he received certain information from the Member.
31. Mr. B and his wife reached out to the Member numerous times in order to get the information they needed from her so to access their immigration file with IRCC, but they did not receive a reply.
32. In April of 2022, Mr. B contacted his Minister of Parliament for assistance with his outstanding immigration matter. He was advised that their application had been approved by IRCC in November of 2020, but the file had been closed because the necessary follow-up documentation had not been provided. The Member never communicated with Mr. B about those

developments, nor did she advise Mr. B that IRCC required further documents from him, nor that their file would be closed.

**Count 9: While and in connection with your representation of MA on an immigration matter, you acted contrary to Rule 3.2-1 of the *Code of Professional Conduct* in that you failed to provide service that was courteous, thorough, prompt, competent, timely, conscientious, diligent, efficient and civil;**

**Count 10: While and in connection with your representation of MA on an immigration matter, you acted contrary to Rule 5-44(1)(b) of the *Rules of the Law Society* in that you failed to deposit trust money into a pooled trust account as soon as practicable after its receipt;**

**Count 11: While and in connection with your representation of MA on an immigration matter, you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to carry on the practice of law and discharge all responsibilities with honour and integrity;**

33. On or about March 3, 2021, MA retained the Member to assist her with a spousal sponsorship immigration application. A \$500.00 retainer was paid by Ms A to the Member, which was never deposited into the Member's trust account and no statement of account was ever provided to Ms A.
34. Ms A was not included on the list given by the Member to the Society on March 16, 2021.
35. The Member advised Ms A that she had submitted her application, and that she was waiting to receive acknowledgment of the application being processed by Immigration, Refugees and Citizenship Canada ("IRCC").
36. Ms A repeatedly asked the Member for confirmation that IRCC had received her application, but the Member never provided confirmation.
37. Ms A repeatedly sought updates from the Member between June and August of 2021, but she did not respond to Ms A's messages.
38. In January of 2022, Ms A sent several text messages to the Member, seeking an update on the process and expressing her frustration at how long it was taking. On one occasion, the Member told Ms A that IRCC was slow because they were prioritizing Afghan applicants.

39. Ms A spoke on the phone with the Member on January 25, 2022, at which time the Member advised Ms A that filing a second application would speed up the process. She said she would send Ms A a list of documents which the Member would need in order to prepare the second application.
40. Ms A followed up with the Member several times seeking the list of documents needed, but she did not reply, nor did she provide Ms A with the list.
41. On February 3, 2022, Ms A sent another email to the Member. On February 9, 2022, the Member sent Ms A an email asking for Ms A's phone number, as she claimed to have lost it. Ms A provided her phone number and requested a meeting, but received no reply.
42. Also in February of 2022, Ms A attended the Member's law office located in Winnipeg and found the office to be closed. Ms A then became aware that the Member's license to practise law had been suspended.
43. Ms A has not received any confirmation that the Member ever submitted her application to IRCC.

**Count 12: While and in connection with your representation of PSC on a real estate matter, you acted contrary to Rule 3.1-2 of the *Code of Professional Conduct* in that you failed to perform all legal services to the standard of a competent lawyer;**

44. The Member acted for both PSC and BKC (the "Cs"), as vendors, and BD and SD (the "Ds") as purchasers of a property in Winnipeg. The Ds agreed to buy the property from the Cs for \$600,000.00, which price included a \$10,000.00 deposit. The possession date was October 1, 2020.
45. In a separate but concurrent transaction, the Member acted for the Ds on the sale of their previous home in Winnipeg, which sale also closed on October 1, 2020.
46. The Ds' mortgage to purchase the property from the Cs, obtained through The Toronto-Dominion Bank, included mortgage instructions which required the Member to notify the bank in writing if she was also acting for the vendor, having accepted a joint retainer. There is no evidence that the Member notified the bank.



47. This matter was still open at Ms Badohal's office on November 15, 2021 when she began serving her suspension.
48. Upon request from the Society, the Member had provided her trust records with respect to both properties in Winnipeg, transactions on February 22, 2021, April 8, 2021, and April 30, 2021.
49. The Member's trust records contained date errors. For example, her records indicated that the mortgage proceeds for the Ds' purchase file were received on September 23, 2020, approximately one week before the closing date of the transaction however, the Member had requested the mortgage funds on October 2, 2020, the day after closing.
50. Despite the date errors, the Ds' trust ledgers were overdrafted: on the sale file, by varying amounts between December 1, 2020 and April 8, 2021 and on the purchase file, by \$28,028.19 from October 10, 2020 until December 12, 2020. Following the Society's involvement, the overdrafts were corrected through a trust transfer and the transfusion of additional funds from the Ds.
51. The Member acknowledged the overdrafts and indicated that she had been having trouble keeping up with her trust accounting. The Audit Department had been working with the Member to correct those issues, including by way of the March 16, 2021 Undertaking.
52. According to the Member, one of the issues leading to the overdrafts was that the Ds had not paid the \$10,000.00 deposit. However, the Member's client files and trust ledgers indicated that the deposit had been transferred within her office from the Ds' sale file to their purchase file, and then to the Cs' sale file.
53. The Member advised the Society that she had initially been "under the impression the parties had exchanged [the deposit] between themselves" but had since confirmed that "the deposit was not received".
54. The Member was asked by the Society about how she came to show the deposit as having been transferred within her office, when it had not been received, and she replied as follows:

I had an authorization to transfer funds, because we anticipated transferring funds between all of the accounts at some point. We did transfer 10,000 to C file. But when it came

to doing the final accounting, we accounted that the \$10,000 had already been received by Mr. C, when it hadn't. So all of our trust accounting was based on Mr. C having received 10,000 from Mr. D. Again, a mistake on my part and the handling of this file. But when I realized the mistake I made, I was in touch with both parties and they both agreed. Mr. D provided me with additional funds.

55. When the Member's suspension started on November 15, 2021, her trust records were still not in compliance with the Law Society's Rules. An Order of Custodianship, (also dated November 15, 2021) allowed for the Society to step in and ultimately, a specialist had to be retained in order to reconstruct the Member's records from the files and available banking information.
56. The Member's records indicated that the \$10,000.00 deposit from the Ds on the purchase transaction was paid out of the \$30,471.68 cash to close which was received by the Member on their sale transaction, on or about September 28, 2020 (in advance of the October 1, 2020 closing date).
57. The buyer's Counsel imposed trust conditions in a letter dated September 26, 2020, which included the condition that the Member "may release funds only: (i) after Closing; and (ii) as long as I have not notified you that that buyers cannot receive possession as required under the Agreement..."
58. Despite that trust condition, Ms. Badohal's trust ledgers indicated that \$10,000.00 from those funds was transferred from the Ds' sale file to their purchase file and then to the Cs' sale file on September 30, 2020, before the closing date.
59. The Member was asked about why the funds were transferred before the closing date, and in response she advised that the funds actually had not transferred:

I had a new assistant working on this file, and we did a memo transfer indicating a trust transfer, but I had not ask her to do the actual transfer of funds. She did enter it into PC law and that was our error. But no money was physically released.

60. The Member paid out \$20,000.00 of the sale proceeds to the Cs on October 10, 2020, despite that they had not yet signed the Transfer of Land, which they signed on October 14, 2020.

61. The Offer to Purchase on this transaction reflected that the property was being sold for \$600,000.00, as did the documents on the Member's client file, but the Transfer of Land filed by the Member indicated that the fair market value of the property was \$560,000.00 and that receipt of that amount was acknowledged by the transferors.
62. There is no indication on the client file as to why the lower fair market value was entered on the Transfer of Land. There is also no evidence on the file to indicate that the Member advised the mortgagor's bank of this discrepancy, as she was required to do under the mortgage instructions.
63. The Member received the mortgage proceeds on the Ds' purchase file in October of 2020, and she paid a portion of those proceeds (\$180,000.00) out of trust to the Cs. However, she did not pay off the Cs' mortgage on the property until on or about November 4, 2020.
64. The Member also provided the Ds with the proceeds of sale of their former home on October 5, 2020, but she did not pay off the mortgage on their former home until on or about December 1, 2020.
65. In a reply to correspondence from me, The Member acknowledged the delays in paying of the mortgages, indicating that "the file was not managed well".
66. The Member's client file indicated that she was to maintain a holdback of \$5,000 in the buyer's (Ds') account "as agreed" for completion of certain items. However, there was no written agreement or instructions from the parties regarding this holdback, and moreover, the accounting records indicate that the holdback was not maintained.
67. During the investigation, the Member agreed that she did not have written instructions regarding the holdback:

The agreement to holdback funds were instructions, verbal received from both parties when they attended my office together. Mr. C in some of his emails agrees that there was a hold back and then in some he denies it. But I do not have written instructions/agreement to this effect.
68. As indicated above, the Member's trust account was overdrafted on the Ds' purchase ledger where the holdback ought to have been maintained.

**Count 14: During the course of the Law Society's investigation into various complaints which had been made against you, you acted contrary to Rule 7.1-1 of the *Code of Professional Conduct* in that you failed to reply completely and promptly to communications from the Law Society.**

69. As is the normal course in investigations such as these, the Society was communicating with the Member in writing and she was initially responsive and provided several replies to the Society's questions. However, the last correspondence that the Society received from the Member was on June 21, 2022.
70. The Society sent the Member further correspondence which required her response on the following dates:
- a. June 22, 2022;
  - b. June 27, 2022;
  - c. July 11, 2022;
  - d. July 14, 2022;
  - e. July 20, 2022;
  - f. July 21, 2022;
  - g. August 2, 2022;
  - h. August 3, 2022;
  - i. August 23, 2022; and
  - j. September 6, 2022.
71. The Member did not provide any reply to any of those communications.
72. There was no "bounce back" or "message undeliverable" message on these occasions when the Society attempted to communicate with the Member, which would indicate that the email to the Member had not been delivered.

### **The Law**

73. Counsel for the Society submitted a Book of Authorities in this case. The *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin MacKenzie ("MacKenzie"), Chapter 26-7: Professional Misconduct was referred to. In that text the following definition was provided:

“Professional misconduct” means conduct in a lawyer’s professional capacity that tends to bring discredit upon the legal profession.

And also point us to the following:

Complaints of professional misconduct, therefore, may or may not allege a violation of a rule of professional conduct. Whether a conduct deserves discipline is determined case by case by the benchers, that is, by lawyers’ elected peers and the public’s lay representatives. Although the rules of professional conduct are generally the best evidence of whether certain conduct is unethical, they should not be read as if they were a statute such as the *Criminal Code*.

74. Counsel for the Society referred to the case of *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4 as a leading authority in Manitoba for disciplinary matters relating to lawyers. The Panel in that case referred to a number of other authorities and texts, including *Lawyers & Ethics*, as referred to above, to set out the purpose of discipline proceedings and the variety of factors to be assessed in determining an appropriate penalty.
75. Regarding the purpose of discipline proceedings, the Panel adopted the followings statements:
  - a. The purpose 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.
  - b. In cases in which Professional Misconduct is either admitted or proven, the penalty shall be determined by reference to these purposes.
  - c. This purpose is fortified by Section 3 of *The Legal Profession Act*:
    - i. The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.
76. The Panel summarized the legal principles in that case as follows:

From these authorities we conclude that the following principles should guide a discipline panel in determining an appropriate sentence for a lawyer found guilty of professional misconduct.

1. A penalty should be imposed to protect the public, maintain high professional standards and foster and preserve public confidence in the legal profession. A sentence is not to be imposed to punish a lawyer.
  2. A review of the checklists in the textbooks and decisions of other discipline panels of factors to be taken into account in fashioning an appropriate penalty indicates many similarities in approach. No one list should be selected as being applicable to any particular case. A panel should not be fettered in its discretion but should be free to choose the factors which suit the circumstances under consideration, including the determination of the weight to be ascribed to any particular factor.
  3. After a guilty plea or following conviction, a panel may consider whether the offending member has admitted guilt and expressed remorse, not for the purpose of imposing a higher penalty but for the purpose of considering whether leniency should be given.
  4. Where a member has been convicted of misappropriation of a client's funds, disbarment should be the penalty imposed unless special or exceptional circumstances justify a lesser penalty.
  5. Where there is no misappropriation, disbarment may be imposed depending on such factors as the seriousness and number of offences, the need for general and specific deterrence, and a prior discipline record.
  6. Where the nature and number of charges for which the member has been convicted demonstrate clearly that a lawyer is ungovernable, then disbarment should be imposed.
77. The Panel in *Nadeau* referred to the *Law Society of British Columbia v. Ogilvy* [1999] L.S.D.D. No. 45, which has been often cited as authority setting out a variety of factors that are to be assessed in determining an appropriate penalty. Although the referred to factors are not exhaustive, I find it helpful to reproduce those factors mentioned:

- a. The nature and gravity of the conduct proven;
  - b. The age and experience of the respondent;
  - c. The previous character of the member, including details of prior disciplines;
  - d. The impact on the victim;
  - e. The advantage gained or to be gained by the member;
  - f. The number of times the offending conduct occurred;
  - g. Whether the member 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 member;
  - 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.
78. The Panel also reviewed how to assess and weigh these factors. In summary, a Discipline Hearing Panel must consider or focus on:
- a. the offence rather than on the offender;
  - b. the desirability of parity in sanctions;
  - c. the desirability of proportionality in sanctions;
  - d. The need for deterrence; and
  - e. The need to ensure the public's confidence in the integrity and reputation of the legal profession.

### **Submissions by the Society**

79. Counsel for the Society submitted that the matters before the Panel were exceptionally serious as they involved a clear lack of integrity, honesty, competence, quality of service, and governability of the Member. Counsel for the Society further submitted that the affidavit evidence submitted is more than sufficient to meet the evidentiary burden placed on them, that evidentiary burden being that on the balance of probabilities the Member is guilty of the counts against her. Counsel for the Society has recommended disbarment of the Member, publication and \$14,650.00 in costs.

80. In recommending disbarment, Counsel for the Society refers to the Member's frequent and continuing misconduct, complete disregard for the authority of the Society to regulate the Member, demonstrated by the Member's intentional refusal to follow the terms of the undertaking or suspension, or to respond to the Society, previous discipline history of the Member, the severe impact the Member's Professional Misconduct has caused the victims, the impact the Member's Professional Misconduct has caused on the legal profession, and the general lack of integrity and honesty on the part of the Member.
81. On the basis of parity, the Society submitted a number of cases where the Discipline Hearing Panel has ordered disbarment of the member.
82. In the case of *Doolan v. Law Society of Manitoba*, 2016 MBCA 57, the Court of Appeal was asked to reverse the Panel's decision to disbar the applicant for this misappropriation of \$9,096.44 in trust funds and mainly for "a clear lack of integrity". It was determined by the Panel in that case that the applicant had altered bank deposit slips in an attempt to cover up his actions with respect to the misappropriated funds. The Court of Appeal upheld the decision to disbar the applicant. At paragraph 34 of that decision, the Court reproduced the Panel's reason for disbarment, which the Court upheld:

[34] The Panel stated that, "The basis principal pursuant to which lawyers... are entitled to continue in the practice of law is the requirement of integrity' and that all of the facts demonstrate "a clear lack of integrity." The Panel concluded that the only appropriate consequence for the appellant's "clear lack of integrity" was disbarment. In addition, it ordered that he pay \$38,108.23 in costs.

83. In the case of *The Law Society of Manitoba v. Wang, Junling*, 2020 MBLS 12, the Panel dealt with similar facts as in this case, in that the member failed to respond to the Society's enquiries regarding issues of competency and integrity, had restrictions placed on their practice, and was eventually suspended but the member disregarded the Society's attempts to govern the member. At paragraph 23 the Panel stated the following:

... it is the primary obligation of panels of the Discipline Committee of the Society to consider whether the public interest in ensuring that legal services are being delivered with competence, integrity and independence has been taken into



account in recommending a penalty. Here, it was observed that Ms. Wang will no longer be practicing law, a penalty which fully addresses concerns that over the course of five years in a sole practice she has been found guilty of 26 charges of professional misconduct and one charge of failing to provide legal services to a competent standard, and accordingly, is not currently someone who can be relied upon to practice either competently or with integrity.

In that case, it was a joint recommendation that the member be permitted to resign from membership in the Society along with a cost order of \$40,000.00.

84. In the case of *The Law Society of Manitoba v. Mackinnon*, 2010 MBL 5, the member had misappropriated trust funds by paying himself monies without authorization or providing the client with a statement of account. Further, in an effort to cover up these breaches of Professional Misconduct, the member attempted to mislead the client and the Society. The Panel ordered that the member be disbarred and that the member pay costs in the amount of \$34,178.32. The Panel stated:

Integrity is the foundation of the legal profession. It is first rule in the *Code of Professional Conduct* and every other rule is based on it. Clients must have faith, that their lawyers are totally trustworthy. They must know that their money is safe, that their instructions will be followed and that they will be kept informed as to exactly what is happening with their matter. Without this level of trust, the profession cannot function.

85. In *The Law Society of Manitoba v. Badahal*, 2021 MBL 7, the Member was suspended for 2 years for issues with honesty and integrity. In that case, the Member misled the Society initially when she applied for admission as an articling student and then in her application for her Petition for Call to the Bar by failing to disclose that she was under investigation for allegedly making false statements to Manitoba Public Insurance. The Panel stated the following in that case:

The member has displayed a pattern of a lack, or failure of integrity that is contrary to the required trust which the public places in the legal profession, and which is essential to enable lawyers to represent their clients in a professional manner.

And

In this case there were layers of dishonesty. The first instance alone would warrant a sanction on its own. Failure to act with integrity brings the administration of the legal system into disrepute. This integrity affects the public's confidence and perception in the profession. The member had an obligation to not act in her best interest but rather to take the steps adverse to her personal interest.

### **Analysis**

86. Based on Rule 71(1)(5), and the lack of conflicting evidence, we accept the affidavit evidence as proof of the statements therein.
87. This Panel of the Discipline Committee finds that the Society has met its burden of proving on a balance of probabilities that the Member is guilty of all 13 counts of Professional Misconduct put forward at the hearing. The evidence presented at the hearing clearly sets out the Member's Professional Misconduct and proves each of the 13 counts pursued by the Society in this matter.
88. Rules 5-96(7) and (8) authorize a Discipline Panel who finds a member guilty of Professional Misconduct to impose a penalty of disbarment and costs as per Section 72 of the Act. Rule 5-100(1) indicates that if we agree that disbarment is the appropriate penalty, that publication is mandatory.
89. The question to be answered is whether disbarment is the appropriate penalty in this matter.
90. The Member has a history of dishonesty and lack of integrity for which she was previously suspended. Not having learnt from her suspension, the Member has continued to act without integrity, and complete disregard for the Society and their attempts to regulate her. One such example, but certainly not the only one, was the Member's use of a secret trust account after providing an undertaking not to act for clients where the acceptance of trust funds is necessary. This was an intentional act to deceive the Society and an intentional breach of her Undertaking.
91. As the Member did not appear at the hearing or provide any response to the Citation, we do not have any explanation for the Member's Professional

Misconduct, and unsurprisingly, the Society has not provided any mitigating factors on behalf of the Member.


92. The Panel finds it instructive to look at previous Panels and how they addressed similar cases. The Panel echoes the comments made in the cases above that integrity is the cornerstone of the legal profession. The legal profession is entrusted with their client's most important and sensitive matters and without the highest level of trust the profession cannot function.
93. No order for disbarment should be made lightly. The Member has demonstrated a clear lack of integrity during her time as a lawyer and has shown herself to be ungovernable by the Society. The Member's actions have brought the administration of the legal system into disrepute. We cannot go back and prevent any damage she has caused her clients through her incompetent legal representation, but we are obligated to protect the public from the Member moving forward. We have an obligation to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence, and the only appropriate penalty that fulfills that obligation, in this case, is the disbarment of the Member.

### Conclusion

94. It is the unanimous decision of this Panel that the Member be disbarred, her name be stricken from the rolls, that costs be ordered in the amount of \$14,650.00 against the Member, and that publication of the Member's disbarment be made by the Chief Executive Officer of the Society.

DATED this 21<sup>st</sup> day of December, 2023.

  
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Roberta Campbell, K.C.

  
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Christopher Lange

  
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Kenneth Molloy