

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

MANU BATISH

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: March 13, 2024

Panel: Helga Van Iderstine, K.C. (Chair)
Kelli Potter
Keely Richmond (Public Representative)

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

REASONS FOR DECISION

The Law Society of Manitoba issued a Citation on June 19, 2023 to Mr. Manu Batish alleging breaches of provisions of *The Legal Profession Act* and the *Rules of the Law Society of Manitoba*. The Citation raised issues of breaches of the Law Society trust and accounting rules and allegations of professional misconduct for failure to practise with honour and integrity. The hearing proceeded by way of virtual hearing on March 13, 2024. Mr. Batish confirmed orally at the outset of the hearing that he was admitting to and

pleading guilty to all the charges as outlined in the Citation. The only issues for the Panel to decide was the consequences which would apply in the circumstances.

The hearing proceeded by way of an Agreed Statement of Facts in which Mr. Batish confirmed he was served with the Citation and had no objection to any of the Panel members. There were no preliminary or jurisdictional issues raised.

Mr. Batish was called to the Bar in Manitoba on January 17, 2017 and has been a member of the Law Society since then. He has no previous discipline history. Mr. Batish practises primarily in the area of real estate conveyancing with limited additional services being provided in family law, immigration and other matters such as acting as a notary, and providing independent legal advice and as well as in criminal law.

The Law Society submitted a number of cases, and an article to support their request for a suspension of 60 to 90 days, with costs of \$3,500.00. Mr. Batish through his counsel submitted that the appropriate consequences for his behaviour should be a fine, conditions on his practice, a letter of apology to the involved client, his continued attendance in therapy and monitoring as may be required and determined by the Law Society and costs. Counsel presented a number of cases in which members had been reprimanded and fined and/or had conditions but did not include any period of suspension. He relied heavily on the decision in *The Law Society of Manitoba v Badmus*,

2021 MBL 5, to support the position advanced that there should be no suspension imposed.

The Facts

Mr. Batish was acting for a client on a divorce which was finalised in September 2020. Between 2018 – November 2020, the client paid Mr. Batish primarily in cash although on one occasion he paid by combination of bank draft and cash fees in the total amount of \$12,005.00.

In November 2022, during the course of investigating another matter, Mr. Batish was asked to produce the client's file to the Law Society. Before providing the file, Mr. Batish asked the client to sign a variety of documents including statements of account and an acknowledgement from the client. Some of the documents were backdated including statements of account. The acknowledgement states that only \$8,505.00 had been paid to Mr. Batish. This is false. Records produced to and reviewed by the Law Society demonstrated that payments had not been properly deposited into trust, that payments made in November 2020, which had suggested a single payment of \$7,000.00, was not in fact correct and that there were two separate \$3,500.00 payments. Mr. Batish admitted, that when the client asked in November 2020 for receipts that he advised the client that if he was going to issue receipts, he would have to charge taxes. He stated that "if he did not reflect the payments as income for himself he would not have to pay

tax and therefore neither would his client". The client agreed to pay the taxes and was provided with the receipt dated November 20, 2020.

Legal Considerations and Analysis

Mr. Batish was charged with violating:

- Rules 5-44(1)(b) (or as it then was 5-43(1)(a) and 5-44(1)(a));
- Rules 5-44(1)(d) (or as it was then 5-43(1)(a) and 5-44(1)(a)); and
- Rule 5-44(1)(m).

These provisions reflect the *Rules of The Law Society of Manitoba* relating to the handling of trust money.

Mr. Batish was also charged with having failed to carry on the practice of law and discharge all his responsibilities honourably and with integrity.

The purpose of the Law Society as described in *The Legal Profession Act*, CCSM c. L107, s. 3(1) is to "uphold and protect public interest in the delivery of legal services with competence, integrity and independence".

The *Code of Professional Conduct* states:

A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

The commentary that accompanies this section (2.1-1) further states:

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

Both parties referenced *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4, June 18, 2013, which accepted and relied on a series of factors which a discipline Panel may take into account in determining consequences. These factors arose from *The Law Society of British Columbia v Ogilvie*, [1999] LSDD 45, 1999 LSBC 17, discipline case digest 99/25.

There was no disagreement between the parties as to what is the purpose of discipline, nor the considerations which the Panel is to take into account in determining the consequences. The purpose of discipline is to protect the public and maintain public confidence in the profession. It is directed towards both specific and general deterrence and in appropriate cases will address competence and rehabilitation. The Law Society in governing the profession, including in how it administers discipline, must also consider and maintain high professional standards.

In *Ogilvie* the Panel outlined the following factors which might be taken into account in determining the appropriate discipline or consequences:

- 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 discipline;
- d. The impact upon the victim;
- e. The advantage gained or to be gained by the respondent;
- f. The number of the time the offending conduct occurred;
- g. Whether the respondent acknowledged misconduct, taking steps to disclose and redress the wrong presence or absence of other mitigating circumstances;
- h. The possibility of remediating/rehabilitating the respondent;
- i. The impact on the respondent of the criminal and 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.

Both parties provided a range of cases to support their respective positions relating to consequences.

Mr. Batish also provided in support of his position the following:

- a. A draft letter of apology which he was prepared to provide to the client;
- b. A report from a therapist he has been seeing. This indicated that he had been under a significant amount of stress at the time of these events and the consequences of his actions have increased his stress leading to depression and personal distress including burnout syndrome. The therapist noted that he had resorted to “unhealthy methods of stress management, mishandling money and giving dishonest responses to the Law Society”. The therapist recommended that he continue to attend monthly counselling sessions for a year to enhance and solidify new habits in mental health, to carefully follow guidelines of prevention relating to burnout, to attend regular services relating to his faith and fellowship, and continue to submit himself to a checkup program for the financial accounting of his business as may be required by the Law Society of Manitoba and how that may have impacted on or played into the decisions made; and
- c. Letters of reference.

Mr. Batish’s commitment to therapy, to initiate, follow up on and seek help and assistance with respect to the stresses he is under is commendable. It is something to

be encouraged and is to his credit. He appeared genuinely remorseful at the hearing and the Panel considered this in determining the appropriate consequences.

Counsel for the Law Society referred us to a reference in Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline*, Toronto: Thomson Reuters (Loose Leaf) at s. 26-18, in which the author commented that evidence of a lawyer's personal stressors at the relevant time may have limited value in considering mitigation of penalty. He quoted an Ontario decision which stated that it is when the stressors are greatest and compliance with the rules most difficult, that the lawyer must "faithfully hew the line" and demonstrate that they are worthy of the trust expected of them.

The Panel reviewed the letters of support and it was unclear, as it often is in these circumstances, the extent to which those references were fully aware of either the requirements of the Law Society or the full extent of the breaches. Mr. Batish is fortunate that he has the support of the community. Providing service to his community and having their support demonstrates his stature in the community and that he is able to provide valuable service to them. Their support and their need for legal services should serve as a reminder of the necessity and need for him to assiduously adhere to the Law Society's requirements of integrity and trust so that he can continue to serve them. This together with his commitment to attend therapy will hopefully provide him the foundation to move forward successfully in his legal career.

Analysis

The Panel considered the evidence, the case law and submissions. It considered and applied the Ogilvy factors in determining the consequences.

The Panel noted there were a number of cases provided in which there had been serious breaches of integrity with a suspension of one month (*Johnson*, 2014 MBL 6, *Currie*, 2022 MBL 5, *Wasylin*, 2023 MBL 6) and of reprimand (*Badmus*). With the exception of the decision in *Badmus*, these cases were all presented to Panels as joint submissions on penalty. The Panels accepted the submissions in consideration of the law relating to joint recommendations. There was no joint submission before us. However, the consequences imposed should be consistent with the consequences imposed in similar circumstances and we have therefore taken the facts of those cases into account. The cases provided by Mr. Batish which imposed fines but no suspension, for the most part lacked the additional concerns about integrity which this case raised.

The Panel is of the opinion that Mr. Batish's stressors and burnout may very well have contributed to the personal challenges he is currently feeling and the feeling of being overwhelmed and burned out at the time. However, it does not explain his decision to try to avoid tax requirements, to encourage a client to lie and to have involved the client in back dating and signing false documents when confronted by the Law Society with respect to the trust accounting breaches. Fundamental to the Law Society's ability to

govern is the requirement that members cooperate and be truthful with them. Mr. Batish chose to mislead rather than respond truthfully.

Law Society rules with respect to trust accounts are there to protect the public, to maintain public confidence in the practice and profession and, in the broader context, to able the Law Society address such public safety issues relating to money laundering and misuse of funds. The trust money provided to a lawyer is not the lawyer's to use. It is provided to the lawyer on conditions that it be held for a specific purpose, in this case for payment of fees. Trust accounting rules are quite clear that these transactions must be recorded appropriately in trust account ledgers and are not be disbursed until such time as accounts have been rendered. Mr. Batish failed to follow these clear and well established Rules. If that had been his only breach of the Law Society Rules the Panel would have agreed with submissions by his counsel that monitoring by the Law Society, a fine and/or some requirements to follow up with his psychologist would be sufficient. However, Mr. Batish went further and by involving the client in his misconduct, he has demonstrated a serious breach of integrity for which more serious consequences need to be imposed to reflect both specific deterrence, but also to demonstrate to the public and profession that breaches of integrity by lawyers is not to be tolerated.

Mr. Batish behaviour, while not the worst behaviour one could imagine does not demonstrate to the public nor to the references he provided, that he was upholding the

requirements of honesty and integrity which are hallmarks of legal profession. While in many respects similar to the facts in *Badmus*, Mr. Batish not only appears to have attempted to evade taxes for both himself and the client, he attempted to mislead the Law Society with respect to deposits made and not made into trust, and he compounded his errors by including his client in those breaches of integrity when he asked the client to sign backdated documents and an acknowledgement that he knew to be false. These are very serious infractions in which he involved his client in trying to mislead. It goes to the core of the role of a lawyer in society, not just on the impact to a single individual.

The public must be able to have confidence in and be able to rely on lawyers to be honest, to uphold the law, and to always act with integrity, despite any personal pressures they may feel.

As a result, this Panel finds Mr. Batish guilty of professional misconduct and is of the opinion that the appropriate consequences are as follows:

1. Reprimand;
2. Suspend from practice for 60 days; and
3. Costs of \$3,500.00.

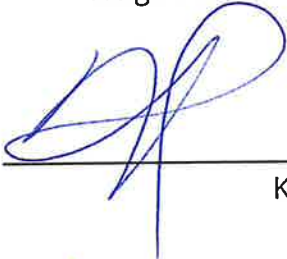
The Panel is also mindful of the fact that the trust accounting rules and requirements are governed by the Law Society and that any further review and requirements with

respect to Mr. Batish's ability to handle trust funds and/or manage trust accounts will be left to the Registrar of the Law Society to determine.

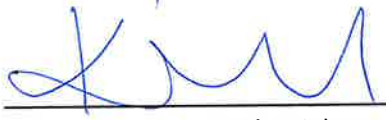
DATED this 25th day of April, 2024.



Helga Van Iderstine, K.C.



Kelli Potter



Keely Richmond