

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**JONATHAN LEE BLACK-BRANCH**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

**Hearing Dates:** September 18, 20 & 21, 2023 & November 21, 22 & 23, 2023

**Panel:** Grant Mitchell, K.C. (Chair)  
Wendy Stewart  
Susan Boulter (Public Representative)

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

**REASONS FOR DECISION – CONDUCT HEARING**

1. JONATHAN LEE BLACK-BRANCH (“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, Wendy Stewart, Member and Susan Boulter, Public Representative.
2. Rocky Kravetsky and Ayli Klein represented The Law Society of Manitoba as legal Counsel. Greg Bartel acted as Counsel for the Member for over two years until he notified the Society on August 27, 2023 that he was no longer acting. There had been numerous delays in getting the matter set for hearing but on May 2, 2023, the

Society informed the Member and his Counsel, Mr. Bartel, that his hearing was scheduled for September 18 – 22, 2023 inclusive. On June 8, 2023, the Society issued a formal notice of hearing to the Member and his Counsel. No objection was raised to the constitution of the Panel, and in fact no response to this notice was submitted by the Member or his Counsel.

3. From August 27, 2023, the Member did not engage an alternate Counsel up to the date of hearing. On October 6, 2023, Society Counsel informed the Panel that Mr. Bartel had offered to act as an *amicus* (friend of the court) for the Member, unless the matter was continuing on a contested basis. Since the Member continued to contest the charges, Mr. Bartel was not involved up to the conclusion of the hearing on the charges.
4. Counsel for the Society filed copies of the Citation as Exhibit 1 and proof of service of the Citation as Exhibit 2. Counsel pointed out that the Member had admitted the jurisdiction of the Society in pre-hearing sessions. The Member is, in addition to being a Member of the Law Society of Manitoba, a Member of the Bar of England and Wales, but not of any other Province or Territory of Canada.
5. The Member did not advise if he would appear in person or request to appear by video conference or otherwise, despite being offered that option by the Society. On September 14, 2023, Counsel for the Society provided to the Member the affidavit of Janice Martin, with Exhibits, containing the facts supporting the charges. The affidavit essentially contained the facts found in an audit conducted by the University of Manitoba concerning financial transactions initiated by the Member during the time that he served as Dean of the Faculty of Law at that University. These facts form the basis of the Society's Citation against the Member. The

Member did not ask to cross-examine the affiant, and did not file an affidavit in reply. The Member also did not request that any witnesses be made available for cross-examination.

6. When the hearing convened in person at 9:30 a.m. on Monday, September 18, 2023, there were several members of the public and the media in the gallery, as these charges have been a matter of public interest because of the alleged spending of University funds. The Chair informed the people attending that they were welcome to observe the public proceedings but not to participate, and could record the proceedings only to the extent allowed in the Court of King's Bench.

### **Adjournment Motions**

7. The hearing was scheduled to begin in person at the Society offices at 9:30 a.m. on Monday, September 18, 2023. Earlier that morning, the Member communicated by email from England, that he was requesting an adjournment of the hearing on the basis that he was medically unable to participate in the hearing. Counsel for the Society opposed the request for adjournment.
8. The two emails that constitute the Member's submission on adjournment were filed as Exhibit "A" for identification. The first email was received by the Law Society at 6:04 a.m. September 18, 2023 and the second at 8:48 a.m. the same day.
9. The first email in Exhibit "A" stated: "Please be advised that I am ill and under medical care. I am unable to participate in any hearing at this time. I would ask you to please postpone and re-arrange any proceedings in my absence. Thank you for your understanding."

10. Counsel for the Society's email response advised the Member that his request for adjournment would be placed before the Panel, and that if he had any material in support, he should submit it at once to Society staff, with the appropriate email address included.
11. The second email arrived at 8:48 a.m. It was a much longer message which indicated that the Member wanted the adjournment "until I am able and fully capable to participate appropriately". It described a long medical history of "depression, anxiety, panic attacks and bouts of paranoia". The email states that "this is a chronic condition ... that pre-dates my moving to Winnipeg for which I have received ongoing treatment ... including psychiatric care and psychological support". It states that the Member has "medical as well as counselling sessions, the next of which is a CBT this coming Thursday September 21". Finally, the email states: "I have been previously been in contacted (*sic*) with my doctor's surgery (clinic) regarding my condition and treatment and had an appointment scheduled for next week. I have been referred to specialist appoint (*sic*) which has been scheduled for the 27<sup>th</sup> September."
12. The second email then attached a message from a clinic that only confirmed a request for an appointment at that clinic. That was the entire material submitted in support of the adjournment request on September 18, 2023.
13. Counsel for the Society addressed the Panel to oppose the adjournment request. He said that under typical circumstances, the Society would accommodate an adjournment request based on the Member's illness, if properly supported. In this case, however, the Panel must consider the history of the matter and the timing and quality of the reasons for the request. The Citation was dated October 25,

2021. A pre-hearing conference was held in July 2022, with Mr. Bartel acting for the Member. Briefs were filed and medical concerns were raised at that time. Counsel for the Member had stated at that time that the Member was in the process of getting medical documentation. Following the conference, months went by waiting for the medical information and the Member and his Counsel did not provide any to the Law Society. Finally, another pre-hearing conference to set hearing dates was held ten months after the first pre-hearing conference, on May 2, 2023 and the present dates were set. The Member attended this session by video conference. The Member and his Counsel indicated on May 2 that the Member had a medical appointment the following week. The Member was given the opportunity to submit medical information arising from that indicated appointment or otherwise. It was not forthcoming and no medical information was submitted from that date right up to September 18, 2023. At the pre-hearing conference, the Member's Counsel indicated that the Member intended to contest the charges.

14. The Society opposed the adjournment request on the following grounds:
  - a) No medical report in support of the alleged illness had ever been submitted, despite it having been promised for over 18 months;
  - b) No apparent effort was made to arrange a medical appointment until the very day the hearing was scheduled to begin;
  - c) There was no indication of any real effort to obtain the medical information, at least not prior to the very day of the hearing;
  - d) There was no request for an adjournment made until immediately before the hearing was scheduled to begin;
  - e) There was a pattern of delay and the current grounds lacked credibility; and
  - f) There was considerable public interest in having the matter heard without further delay.

15. The Panel retired to consider the adjournment request, and for the reasons submitted on behalf of the Law Society, decided to deny the adjournment request. The Panel agreed that where a proper foundation for adjournment based on medical grounds was provided, the adjournment would be granted. That foundation would include:
  - a) Request submitted at the earliest reasonable opportunity, so as not to inconvenience the others involved in the hearing;
  - b) Request supported by appropriate medical evidence that reflected assessment, diagnosis and prognosis for recovery within a reasonable period;
  - c) Confirmation that the medical issue rendered the Member unable to participate in the hearing;
  - d) Follow up with specialist care where the need for that was indicated; and
  - e) An absence of any indication that the request was not *bona fides*.
16. The Panel, through LSM staff, informed the Member that it had unanimously decided to deny his adjournment request and that the hearing would proceed on Wednesday, September 20, 2023 at 9:30 a.m. CDT. The Panel informed the Member that if he intended to participate when the hearing resumed, or if he had any other material he wanted the Panel to consider, that he was to so communicate to Society Counsel no later than 8:00 a.m. September 20, 2023.
17. No communication was received from the Member until 7:48 a.m. on Wednesday, September 20, 2023. At that time, the Member sent an email to the Society outlining a further request for adjournment. This request was based on lack of legal representation and on medical grounds.

18. The rationale for the legal representation argument was that the Member had not had sufficient time to find alternate Counsel and that he was “not a professional in this field of law”. He argued that his medical condition exacerbated his difficulties in retaining Counsel or representing himself.
19. The rationale for the medical grounds argument was an elaboration on the medical grounds stated two days earlier. He stated that he had submitted medical evidence and reports to the Society in the past and that he was presently submitting evidence from the NHS that he is diagnosed with severe depression, severe anxiety and panic attacks. He stated that he had a follow up appointment that afternoon (i.e. September 20 at 2:00 p.m. UK time (8:00 a.m. CDT)) and that he would follow up with written confirmation later that day.
20. He closed the email asserting that the hearing was scheduled for two weeks duration and requested that the hearing now be adjourned to the second of those weeks.
21. The Notice of Hearing makes no reference to a second week of hearing and Society Counsel denied that any such second week had been scheduled.
22. Counsel for the Society again opposed the Member’s adjournment request and made an oral submission. The Panel asked that Society Counsel prepare a written synopsis of its submission and send it by email to the Member, giving him a further 30 minutes to respond to the legal arguments raised by the Society, but not to attempt to introduce new evidence not included with the adjournment request of earlier that date.

23. The Society's grounds for opposing the Wednesday adjournment request were as follows:

- a) Concerning the legal Counsel argument, the Member raised this matter for the first time two days after the hearing had started. The Member had known since at least August 27, 2023 that Mr. Bartel was no longer acting. There was no evidence as to why the Bartel relationship ended, which could be relevant to what would be a reasonable time to find an alternate lawyer. The Member provided no evidence of his attempts since then to retain new Counsel or even that he had intended to retain Counsel.
- b) Concerning the medical issue, there was no evidence about when the Member started his communications with medical professionals. The "unfit to work" letter was based on a telephone conversation in which the doctor only knew what the patient told him, not an in-person meeting or examination of the patient or a review of a medical history. The Member's promises of medical reports, through his Counsel, date back to November 2020, yet nothing has been submitted. The undertaking to provide medical information was repeated several times in the pre-hearing conference ("PHC") brief in July, 2022, and that was specifically to address the Member's ability to participate in a hearing. Delays from July, 2022 to May, 2023 were specifically to allow for the submission of medical information, but the Member failed to provide any. In the May, 2023 PHC, the Member appeared by video and stated that he was seeing a Doctor the following week. Again, no medical information from that appointment was delivered. The doctor's letters provided in the current proceedings are not actual medical reports. They are not evidence of a medical diagnosis and provide no prognosis. There was no evidence that the Doctor knew the purpose for which she was providing the form. Being fit to work is a different issue from being fit to participate in a hearing.
- c) Society Counsel then repeated his argument that the public has an interest in seeing a timely disposition of these charges.

24. The Member did reply within the 30 minutes allowed. He failed to follow the direction not to introduce new evidence and his entire reply was an attempt to do so. It would be inappropriate to consider that evidence.



25. After considering the submissions concerning the Wednesday adjournment, the Panel unanimously decided to deny the adjournment request. It directed Society staff to notify the Member of the Panel's decision.
26. After the hearing started and some evidence was presented, Society Counsel requested that the matter be put over to October 6, 2023 for a further PHC and that October 20, 2023 be the next day of the formal hearing. Neither the Member nor Counsel on his behalf attended the PHC on October 6, 2023. Just prior to the October 20, 2023 continuation of evidence, the Member again requested an adjournment. This time, Society Counsel agreed to put the matter over to November 21- 23, 2023 inclusive, for further evidence, and for submissions. The Panel acceded to the joint request.
27. On November 20, 2023, on the eve of the continuation of the hearing, the Member made another motion to adjourn the hearing. At 6:50 p.m. on the evening before the scheduled resumption of the hearing, the Member sent an email to the Society, with a copy to his previous legal Counsel who had offered to serve as *amicus* in this case. The Member stated that he wished to apply for an adjournment based on his continuing medical condition. He stated that Dr. Margaret Stewart had deemed him unable to participate at this time. Her letter was to follow in due course.
28. On November 21, 2023 at 6:33 a.m., the Member sent another email attaching Dr. Stewart's unsigned letter. That letter stated:

"This patient is genuinely significantly unwell at the moment. He is being treated for anxiety, depression and panic attacks. He is not currently well enough to be able to take part in the proceedings. I consider that it

would be necessary to delay so that he has the time to recover and to take part in a meaningful way.”

29. Society Counsel again opposed the motion to adjourn. He noted that this request followed the pattern of the previous adjournment requests in many ways. It was submitted at the last minute. The unsigned note was from a general practitioner, who was noted on her Clinic’s website as being absent from work on extended leave. There was no indicated treatment that could lead to the necessary recovery to be able to participate. There was no indication that the doctor and patient had met or that any examination had occurred. There was no referral to a specialist, even though the Member had produced a much more thorough report from a psychiatrist in 2020. There was no time identified in the future when the Member could be expected to have recovered sufficiently to participate in the hearing. This was just the latest in a long pattern of the Member’s attempts to delay the proceedings. On November 21, 2023 the hearing was already underway and there were witnesses present and ready to testify.
  
30. After considering the motion to adjourn and the evidence in support of it, and after considering the position of the Society and the principles regarding adjournment requests set out above, the Panel decided unanimously to deny the motion to adjourn, for the reasons stated by Society Counsel. The matter proceeded on November 21, 2023. The Member was immediately notified that his motion had been denied. There was no further correspondence from the Member from then on through to the end of the hearing.

### **Hearing on its Merits**

31. The hearing reconvened at 1:20 p.m. on Wednesday, September 20, 2023. The Member made no attempt to participate, virtually or otherwise. Society Counsel filed the Citation, proof of service, proof of membership in the Society and proof of membership in the Bar of England and Wales. He then filed the affidavit of Janice Martin, the Director of Audit Services for the University of Manitoba, in which she stated the findings of an audit that the University performed in response to a Whistleblower report in early 2020. The affidavit addressed all of the counts alleged in the Citation, except for item vi) concerning using Desautels funds to purchase the Member's allergy medication. The Society called no evidence on that allegation and, therefore, the Panel is not addressing it. The Society also did not address item vii) in the Citation concerning the purchase of books. The Panel declines to deal with that count as well.
  
32. In support of the statements of Janice Martin in the affidavit, three (3) volumes of supporting documents were filed as Exhibits to the affidavit. Counsel for the Society advised that he had sent the Martin affidavit electronically to the Member on September 14, 2023. Society Counsel further advised that he had received no communication from the Member in response to the affidavit, no request to cross-examine, and no affidavit in reply to the Martin affidavit. Society Counsel advised that he was not calling Janice Martin to testify, and that he was relying on s. 71(1) 5. of *The Legal Profession Act*, which provides for the admission of affidavit evidence as *prima facie* proof of its contents.

33. The affidavit provides several relevant statutes, and policies of the University. These include *The Public Interest Disclosure Act* which defines “wrongdoing” under the Act to include gross mismanagement of funds or assets of the University. It also includes the “Responsible Conduct of Research Policy” which prohibits financial mismanagement of grants or award funds, using grant or award funds for purposes inconsistent with the policies of the funding entities, misappropriating such funds, or providing incomplete, inaccurate or false information on documentation for expenditures from grant or award funds.
34. The Martin affidavit states that the Faculty of Law provides programs leading to Juris Doctor, Master of Laws and Master of Human Rights degrees. In addition, the Faculty operates the Marcel A. Desautels Centre for Private Enterprise and the Law (the “Desautels Centre”), which was established in 2006 pursuant to the Desautels Endowment Fund Agreement, with an initial endowment of \$5 million. That Agreement requires that the funds be used to support the activities of the Centre. The purpose of the Centre is to “integrate the disciplines of business, law and the humanities as they apply to family controlled and other private enterprises”. The Centre is to “promote research into these multi-faceted and complex issues, provide service to the business community and serve as a resource to members of the professions. It was intended that through its academic programs, students will develop the necessary skills and acquire relevant perspectives to address, in a holistic manner, issues faced by these enterprises and their owners at all stages of the private business life cycle”.
35. Concerning the Member specifically, the affidavit states that he was hired as Dean of Law in April, 2016 and assumed that position effective July 1, 2016. As such, he was subject to the University’s Deans By-Law and all relevant policies, including

those concerning conflict of interest, travel and business claims and purchasing. He received specific training on the rules concerning his use of University funds. The By-Law and relevant policies were attachments to the Martin affidavit.

36. The Martin affidavit states that the Member became Chair and Director of the Desautels Centre as of April 3, 2017. From that date, he had access to funds from the Faculty and from the Desautels Endowment.

### **Facts Regarding Citation Allegations**

The counts in the Citation are as follows:

- i) "Between 2018 and 2020 you caused U of M to pay in excess of \$500,000 for your own educational activities of which \$472,282 was from Desautels Endowment funds when such use of funds was not for the purposes of the Desautels Centre or otherwise authorized by the Desautels Endowment or by the policies and guidelines set by U of M."
37. The Martin affidavit states that "from April 2017 through February 2020, Dr. Black-Branch expended \$518,723 for activities listed as his own professional development ("PD"). Of that amount \$472,282 was charged to the Desautels Endowment and \$46,441 to operating funds. These expenses were incurred in the Member attending non-degree programs at Harvard and Yale Universities while he was under appointment and contract at UM. By comparison PD expenses charged to UM by all other Faculty of Law personnel in the same period was \$18,928."
38. The purposes of the Desautels Endowment as set out in a discussion paper attached to the Desautels Agreement were to "expand the training available for future lawyers and current practitioners; provide a new resource centre for

entrepreneurs and family businesses; and attract academics to the Faculty whose research and outreach activities will provide service and support to the profession and the business community". There is nothing to suggest that funds could be used to pay for professional development for anyone, including the Chair and Director of the Desautels Centre or the Dean of Law. It cannot be argued that PD for the Director/Dean was consistent with or contemplated in the terms of reference of the Desautels fund.

39. In the estimate of annual operating costs for the Centre, the purposes for the spending of the funds were listed as "Faculty (Salaries and Benefits); Sessional Instructors; Administrative Support; Research and Library Support; Small Business Law Clinic; Conferences, Moots, Competitions; and Student Aid". None of these are associated with PD for the Dean or Director.
40. As Director of the Centre, it was the Member's responsibility to establish, in consultation with an Advisory Committee, a budget for the Centre. The Member did not appoint an Advisory Committee and did not prepare or submit a budget. He did make a presentation for 2019/2020 planning and budgeting in which he described the planned budget as: "support Chair stipend, sessional instructor salaries, student research wages, and other business activities". He did not mention in this presentation the use of the funds for his PD expenses, even though these were by a very wide margin the largest expenditures of the Centre. He did not seek "one over one" (i.e. the Provost to whom he reported) approval for his use of the funds for his PD.
41. It is significant that the payments for his PD expenses were routed through EPIC, a program that paid invoices received by the UM that were subject only to the

approval of the Dean. In effect, only he approved his own expenses. They were processed by staff who reported to him and who faced a significant power imbalance if they had any concerns about the expenses being processed. He used the EPIC program and University staff to process the payments for these PD costs, which circumvented the scrutiny and approval process of the UM administration. The Panel heard *vive voce* evidence from two of the Faculty staff and affidavit evidence from a third, which indicated, among other things, that when they questioned the Member about his expenditures, he told them to “stop asking questions and to just pay the amounts”. The Panel draws the clear inference that based on these facts, the Member knowingly improperly used University and Desautels funds exclusively for his personal benefit. If there was some plausible justification for his use of this very large amount of money to pursue these courses, it was incumbent on him to present that justification to the Panel to challenge the *prima facie* case clearly made out in the Martin affidavit. The Member made no attempt in any form to assert such a justification. It is difficult for the Panel to even imagine what such a justification would be. This is the behaviour of a person who was clearly attempting to avoid detection for improper spending. The allegations in this count in the Citation are proved, and amount to a breach of integrity.

ii) “You charged and caused U of M to pay for your benefit expenses claimed to be for meals and lodging in connection with your educational activities in instances where course fees included food and lodging.”

42. The Martin affidavit, in paragraph 55 and following, outlines several examples where the Member’s PD courses included accommodations and meals. Yet he claimed and received reimbursement for credit card and per diems in the same time frame during the relevant courses. This meant that the UM was paying twice for meals. As stated in the Martin affidavit, paragraph 55, “Since the details of PD

courses were not provided to Dr. Black's one over one, she would not have been aware that meals were already included in program costs." UM independently verified that Harvard provided meals and accommodation on campus through the duration of the Member's course. He nevertheless submitted \$4435 worth of meal expenses and per diems through the course period. Following a similar pattern at Yale University, he sought and obtained \$3921.05 of reimbursement of meal expenses there, despite meals being included in his \$80,000 tuition.

43. It is possible, though improbable, that an explanation for these double charges for meal expenses during these programs could be provided. However, the Member did not rebut this very strong *prima facie* case of financial impropriety, and we find the second charge in the particulars in the Citation proven. The culpability for this conduct is exacerbated by the Member's failure to disclose to his one over one the details of his PD programs, and one can only conclude that he did not want her to know that his meals were covered under these programs. The allegations in this count in the Citation are proved, and amount to a breach of integrity.

- iii) "You caused U of M to pay for 201 meals at the Manitoba Club at a cost of approximately \$50,000, including membership costs, of which approximately \$11,000 was from Desautels Endowment funds, on the basis that you had, on each occasion, dined with someone for the purposes of U of M when:
- a. None of these payments were for any purposes of the Desautels Centre or otherwise authorized by the Desautels Endowment;
  - b. Contrary to representations made by you to induce U of M to make such payments, and in any event, contrary to the policies and guidelines of U of M, for at least 141 of those occasions you claimed and received or caused such payments when you had dined alone;



- c. For at least 19 of those occasions, to induce U of M to make such payments, you represented that you had dined with specific named individuals when you had not; and
- d. For other of those occasions to induce U of M to make such payments you represented that you had dined with one or two specific persons who were members of the Manitoba Club, when you had not.”

44. The Panel heard extensive evidence on this count of the Citation. Marcia Kort had been the executive assistant to the Dean when the Member was Dean. She testified that when processing his meal claims from the Manitoba Club, she used his calendar to find the names of people he would have been meeting with that day. When the calendar didn't provide the name, she then asked him the name of the person with whom he had dined. Whether from the calendar or from the information received verbally, she wrote the name of the companion on each chit from the Manitoba Club. The chits, with her notes, were submitted in evidence, along with the invoices from the Manitoba Club. Those invoices did include charges for membership as well as meal charges. It was not until late 2019, shortly before the employment of the Member terminated, that Faculty staff noticed that the chits indicated "Cover 1", meaning that the Member had dined alone. Other evidence demonstrated that the chit record as to the number guests was reliable. It was evident that for the most part, the Member dined at the Manitoba Club alone, yet claimed the meal charges as a hospitality expense for the benefit of UM, or the Desautels Centre, which was false.

45. The Panel also heard from several of the purported guests. One lawyer filed an affidavit stating that although the Member had submitted her name as his guest at the Manitoba Club on 15 occasions, she had not dined with him there on those occasions, and in fact had never dined with him there. Two other lawyers, whose

names were written on the chits, testified at the hearing that they had not been with the Member on any of the indicated occasions. The Member had also indicated on 45 chits that he had dined with RC, a lawyer. RC testified he had met with the Member regarding membership on the Board of the Legal Data Resources Corporation ("LDRC") which had no connection of the UM or the Desautels Foundation. RC, who was himself a member at the Manitoba Club, testified that he had dined there with the Member on 6-8 occasions, and that RC had paid for the meals on several of those occasions. RC was definite that he had not dined with the Member at the Club on 45 occasions. He also indicated that the meals they did have together were of a social, not business nature.

46. It is established from the evidence concerning the Manitoba Club that the Member improperly charged his membership in that Club to the University and, again, did it through EPIC to avoid oversight. Further, it is established that the Member falsely claimed to have been entertaining guests, on multiple occasions, to discuss relevant UM or Desautels business, when he knew that was untrue. He had eaten alone and was making a false claim for reimbursement. By implicating others in these fraudulent claims, he made himself even more culpable. These fraudulent claims breach the core of his duty of integrity.
- i) "Between approximately November 2016 and November 2019 you caused U of M to pay for 62 meals at Across the Board Games Café, including transportation, parking and tips, many of which you caused to be paid from Desautels Endowment funds purportedly on the basis that you were conducting research including interviews with specific persons when:
- a) No such interviews were conducted;
- b) No meaningful research was conducted and in any event none that required 62 separate visits; and

c) On many occasions the expense charged included both your meal and a takeout purchase, when such research as you purported to be conducting would have required personal attendance only.”

47. The Martin affidavit addresses this count, beginning at paragraph 66. It identifies 62 meals at this Café and related transportation expenses. Most of the charges were to the Desautels Endowment. The amount charged in total was \$3790. There were parking claims for each of the meals and these are not included in the \$3790 total. The affidavit lists the 62 meals and the information supplied in support of the reimbursement. On only a few occasions is another person identified as having been involved. As with the Manitoba Club, the restaurant's records in all but three (3) of the 62 claims show the number of guests as “1”, meaning the Member dined alone. The Member's note as to the purpose of the claim on 44 occasions was “research startup ventures”. Four other claims are blank as to their purpose. On the rare occasions where a guest is indicated, the Member noted he had been dining with Olaf Pyttik, an owner of the restaurant. When the Provost's office questioned the validity of these claims, the Member stopped submitting receipts from the Café.
48. Nicholas Mann testified that he was the manager of the Across the Board Games Café which had been located on Albert Street in Winnipeg and was now at 211 Bannatyne. The Café offered board games for patrons to play and a full-service bar and restaurant. Mr. Mann was at the restaurant most days when it was open, which was 6 days per week. When he was working, he was always present between 5:00 p.m. and 7:00 p.m. Mr. Mann reviewed receipts issued to the Member for items purchased at the restaurant. The receipts showed how many guests were being served and at what area in the restaurant, and what had been purchased. Mr. Mann frequently saw the Member as a customer in the restaurant who dined alone,

at the bar. He would order a meal to eat immediately, and smoothies and a pizza to take with him when he left. Mr. Mann never had any discussions with the Member other than incidental to the service of food and payment. The Member came in, sat at the bar, ordered his food, ate part of it and paid for it before taking his takeout package with him. The Member did not use the games services of the business, or the table area where someone transacting business might be expected to sit. He had only perfunctory conversations with Mr. Mann or other staff. The Member sometimes may have worked on a computer or read a book or made some notes. Mr. Mann did recall one occasion when the Member mentioned a book he was writing, related to nuclear research, weapons, power or of that nature. They never discussed the history of the café or its operations. At the time the Member attended the café, Mr. Mann was not aware of his occupation. In total, according to the records, the Member attended the café 62 times, all around dinner time, once or twice per week.

49. It is established through this evidence that the Member was making inappropriate reimbursement claims for his expenses at the Across the Board Games Café. When the university challenged the expenses charged to the Endowment, the Member then ceased making such claims. The claims concerning the purposes of these meals were false, and they did not relate to the purposes of the Desautels Endowment. The allegations in this count in the Citation are proved, and amount to a breach of integrity.

viii) You caused Desautels Endowment funds to be paid to cover expenses of the International Society of Law and Nuclear Disarmament ( ISLAND”) when you were President of its Board of Trustees when such payment was not authorized by the Desautels Endowment or otherwise for the purposes or benefit of the Desautels Centre”.

ix) You caused U of M to pay \$75,000 to ISLAND to be a donation without disclosing to U of M that you were President of its Board of Trustees and in a conflict of interest, contrary to the policies and guidelines of U of M.”

50. The Martin affidavit addresses these counts in paragraphs 73 and following. It states that the Member described himself as the founder and executive director of ISLAND. He was President of ISLAND's board of trustees during his time as Dean at UM's Faculty of Law. ISLAND was incorporated in Switzerland in February, 2019 with the Member identified as its president. ISLAND was also incorporated in Canada with the Member listed as one of its directors. The Canadian corporation's registered office was the same as the Member's residence. The Member was therefore in a patent conflict of interest, which he failed to treat as such with disclosures and plans to manage the conflict. The Member submitted the incorporation cost of \$200 to UM for payment. The UM had no interest or involvement in ISLAND.
51. In January 2020, the Member initiated a process to have UM make a \$75,000 donation by directing his Faculty staff to set up the payment and to provide an invoice from ISLAND, as well as a covering letter to accompany the donation. Society Counsel informed the Panel that this was to be the first of three such annual donations in the amount of \$75,000 each. No one but the Member approved these donations. Because these financial arrangements were clearly for the benefit solely of the Member and his corporation, and not for the benefit of the UM and with no disclosure to or consent from the UM, these arrangements constitute a breach of integrity.

## **General Submission**

52. In his submission, Society Counsel described the actions of the Member as “a persistent and pervasive failure of integrity”, one that straddled both professional misconduct and conduct unbecoming a lawyer. Integrity is in fact the first principle of the lawyer’s duty in the *Code of Professional Conduct*. Professional conduct relates to actions or inactions in the course of one’s work as a lawyer; conduct unbecoming arises in the private life of the lawyer. Both are involved here. Although the Member did not engage in the conventional practice of law of representing clients, he was an *ex officio* member of the Benchers of the Law Society and had extensive other interactions with the profession in the course of his work as Dean, and as Director of the Desautels Centre, and he used or exploited those in the course of the misconduct outlined in the Citation.
53. As for the standard of proof in these proceedings, it is well established that the civil standard applies, regardless of how serious or even scandalous the allegations may be. *F.H. v. McDougall*, [2008] S.C.J. No. 54 and cases that have applied it in the Law Society context, with the approval of provincial courts of appeal, including in Manitoba, such as *T.D. v. Director (Child and Family Services)*, 2015 MBCA 74 per Madam Justice Steel. As long as the evidence, viewed in its entirety, tips the balance in favour of establishing the misconduct, that is enough to prove the charge. Here we have clear evidence by affidavit or *vive voce* testimony to establish the allegations in the Citation, which in turn contain the elements of breach of integrity which establish professional misconduct and conduct unbecoming a lawyer. The *Code* states the duty to act with integrity and on many, many occasions and to a great extent, the Member has breached that duty, on a balance of probabilities. He has had ample opportunity to answer to the charges and he has failed to do so. It

is not necessary to prove that he committed the breaches intentionally (although the evidence supports a finding of intention). It is enough if he acted in a careless or sloppy manner. He has a positive duty to avoid dishonourable conduct.

54. The Member did not practice law in the conventional sense but held a prestigious position as Dean of the Law School, and as Director of the Desautels Centre, where the profession and community expects the incumbent to behave with the utmost good faith. The Martin affidavit indicates that in this small faculty of 350 students, the University has never previously experienced concerns of any financial improprieties by its leaders. Until this Member became Dean, the Law Faculty has earned the trust it has enjoyed. Marcia Kort served under two prior deans of Law and had never previously had concerns of financial impropriety, despite the opportunities for misconduct of which this Member took advantage. That the Member would have engaged in this misconduct to this extent, for this length of time, on this many occasions, in this many forms, and involving this many others in the processing of his improper claims is a particular concern and makes the proven allegations in the Citation even more serious.

### **Law**

55. *The Legal Profession Act*, s. 3(1) states that the purpose of the Society (LSM) is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence". Since the LSM determines the license status of all lawyers in Manitoba, it must, in the face of a complaint against a member, assess competency, integrity and independence of that lawyer, including one not actively delivering legal services to the public.

56. In s. 71(1) of that *Act*, hearings on a charge against a lawyer “apply the rules of evidence as in the Court of King’s Bench, but an affidavit or statutory declaration is admissible and, in the absence of evidence to the contrary, is proof of the statements in it”.
57. LSM relied extensively on affidavits in presenting its case, most importantly on the affidavit of Janice Martin, a UM auditor. While the affidavit relies to a considerable degree on information gathered by persons other than Ms. Martin, the affidavit in each situation identifies the person who is the source of information. The other affidavits were based on personal knowledge of the affiant. The Member had ample opportunity to cross-examine the affiants or the sources of the second hand information and elected not to avail himself of that. He also had the opportunity to file his own affidavits in response or to give testimony in response. He had legal Counsel representing him for several years leading up to a point shortly before the hearing began, and even after the hearing began, that Counsel provided support to him, as disclosed to the Panel by LSM Counsel. There was therefore no unfairness in the use of affidavits in this hearing.
58. In the *LSM v. John Sinclair* case, July 12, 2017, the Member raised a preliminary objection to the LSM’s use of affidavit evidence:
- (at page 3) 4. The member did not object to the admissibility of the affidavits but questioned the fairness of having a written version of the Society’s case available to the Panel to review during its deliberations while requiring the Panel members to rely on their notes to review the member’s case. While the Panel appreciates the sincerity of the member’s concern, we are of the view that the use of affidavits is both a fair and efficient means of putting the evidence before a discipline Panel.



The evidence in this case was very technical and involved details regarding multiple transactions. This is precisely the type of evidence that lends itself to an agreed statement of facts or an affidavit. It is very helpful to the Panel members to have this information in written form. It makes following the evidence much easier and notes from cross-examination can be added to the Panel member's copy of the document, allowing for a good record of the evidence to be available during deliberations. Of course, in the interest of fairness, the affidavit should be shared with the other side well in advance of the hearing. We are confident that allowing the Society (or the member) to put its case in through affidavits does not give an unfair advantage. The Panel members remain able to evaluate and weigh all of the evidence whether received in written or oral form."

59. In this case, affidavits were the best way to present the relevant evidence, and caused no prejudice to the Member. There were many branches to the charges in the Citation and they were encompassed in the UM's audit of the Member's financial activities while Dean. The affidavit of Janice Martin captured the key facts relevant to the charges in the Citation in an orderly manner that would have been difficult to replicate through the testimony of various witnesses. The Member elected not to participate in the hearing or to put any defences to the charges in any form, whether by affidavit, cross-examination of LSM affidavits, *vive voce* testimony or submission. Based on his failure to participate in the hearing or immediately before it, Society Counsel invited the Panel to draw an adverse inference from his failure to provide evidence. Given his stated reasons for declining to participate, the Panel does not draw the adverse inference, but is

satisfied that the use of affidavit evidence by the LSM was more than fair in this case.

60. Section 71(1) of that *Act* goes on to provide that:

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."

61. This is what happened in the current hearing. The Member had an abundance of notice, with the hearing dates arranged through his legal Counsel acting at the time. It was manifest that the Member was aware of the hearing on each of the hearing dates based on the correspondence he sent to the LSM. The Member also had ample opportunity to arrange to file his own affidavit, cross-examine the other affiants, and to attend the hearing virtually (since he resides in the United Kingdom). For reasons stated above, the Member failed to make out a case for delaying the hearing and it therefore proceeded in his absence.

62. Section 2.1 of the *Code of Professional Conduct* of the LSM addresses the obligation for a member to act with integrity:

2.1-1 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."

63. In the commentary to this section, it states:

(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.

(3) Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice, for example, committing any personally disgraceful or morally reprehensible offence including an act of fraud or dishonesty, will reflect upon the integrity of the lawyer, the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that the knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action."


64. These commentaries have direct application to this Member and this case. The Member's false claims of entertaining guests at Winnipeg restaurants amounted to fraud, when he wrongfully obtained reimbursement for meals purportedly involving the University's or the Centre's business. His processing of vast amounts of university funds for Ivy League courses, outside the terms of reference of the funds charged, without disclosure to or approval of more senior UM representatives, and double charging for meals while on those courses not only involve the appearance of impropriety and were morally reprehensible and were at the very least dishonourable and questionable conduct. The Member devised a scheme to improperly obtain financial benefits in a system calculated to avoid oversight of more senior administrators or the UM's legal department. When his subordinates sought to question the legitimacy of the actions they were directed to take, the Member told them, directly and indirectly, to "stop asking questions and

just pay it". He then had the temerity to suggest that his actions were permitted because he had the approval of his subordinate staff. This egregious behaviour does not reflect well on UM, the profession and on the administration of justice, as prohibited by the *Code*.

65. Society Counsel submitted several cases, including SCC authority (*McDougall*), that the standard of proof applicable to this case was on a balance of probabilities, and there can be little doubt that this is correct, even where the allegations against the Member are so serious. However, we simply add that even if the standard had been the criminal standard of beyond a reasonable doubt, the Panel would have been satisfied that proof was sufficient.
66. For all of the above reasons, this Panel finds that Jonathan Black-Branch has on many occasions breached his duty of integrity and has therefore committed professional misconduct and/or engaged in conduct unbecoming a lawyer. The parties may now proceed to schedule a hearing on issue of penalty.

DATED this 15<sup>th</sup> day of December, 2023.

  
Grant Mitchell, K.C.

  
Wendy Stewart

  
Susan Boulter