

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**JONATHAN LEE BLACK-BRANCH**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

**Hearing Date:** January 23, 2024

**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 – CONSEQUENCES HEARING**

1. On December 15, 2023, this Panel of the Discipline Committee (Grant Mitchell, K.C., Chair, Wendy Stewart, Member and Susan Boulter, Public Representative) issued its Decision on the Conduct Hearing concerning a Citation against JONATHAN BLACK-BRANCH (“the Member”). The Panel found that all of the charges in the Citation on which the Society proceeded were proven and that the Member was guilty of professional misconduct and conduct unbecoming a lawyer in numerous breaches of his duty of integrity.

2. That Decision was conveyed electronically to the Member at the time, as was subsequent notice of a Consequences Hearing to be held at the Society offices on Tuesday, January 23, 2024 at 9:30 a.m. There was no communication from or on behalf of the Member in response to either the Conduct Decision or the notice of the Consequences Hearing, or communication of any kind whatsoever up to the time of hearing. The Panel therefore, again, proceeded in the absence of the Member on January 23, 2024 and heard only from Counsel for the Society (Rocky Kravetsky and Ayli Klein).
3. When a Member is found to have committed misconduct, a Panel of the Discipline Committee has available to it a range of potential penalties to impose, ranging from a reprimand at the low end to disbarment as the ultimate penalty. The Panel also has the power to impose an order of costs against the Member. These disciplinary alternatives are set out in s. 72(1) of *The Legal Profession Act*.
4. Rule 2.1-1 of the *Code of Professional Conduct* requires honour and integrity in the practice of law. Paragraph (1) of the Commentary in that Rule declares that “integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession”. Persistent and pervasive breaches of integrity, such as we have found occurred in this case, are therefore the most serious misconduct a disciplinary Panel can be faced with. In the absence of significant mitigating factors, breaches of integrity result in disbarment.

5. Counsel for the Society submitted several authorities where Panels of the Discipline Committee have imposed disbarment for breaches of integrity, including the *Doolan*, 2014 MBLS 7 and affirmed in the Court of Appeal, 2016 MBCA 57 and *Griffin*, 2005 MBLS 5 cases and offered other examples such as the *Anhang*, 2002 MBLS 7 Decision. In each of these cases, there was a smaller quantity of money misused and fewer occasions of misconduct, occurring over generally shorter periods of time. All of these factors in the Member's case make his breaches more serious than those in the precedent cases. In each of the precedent cases, at least some evidence was submitted to mitigate the penalty. In our case, we have none. In the *Griffin* Decision, the Panel cited the Gavin McKenzie text, "*Lawyers and Ethics: Professional Responsibility and Discipline*" (2020):

"Acts of fraud or theft on the part of a lawyer will almost universally attract the penalty of disbarment unless there are exceptional extenuating circumstances."

In our case, we have numerous acts of fraud over an extended period of time based on a consistent dishonest scheme, during which the Member told his subordinate staff to "stop asking questions and just pay it". We also have no evidence in mitigation, no extenuating circumstances whatsoever. Rather, we have a person who abused trust in an esteemed position (Dean of Law) in our profession.

6. Apart from the fraudulent claims for meal expenses, the Member used \$472,282.00 of the Desautels Endowment Fund for unauthorized and unnecessary courses at Ivy League institutions for his own benefit exclusively.

He had access to those funds because of his position of trust as Chair and Director of the Desautels Centre. His misuse of those funds violated the terms of the Desautels Fund, the conflict of interest policy of the University and fundamental principles of integrity. This was by far the largest sum that the Member improperly used and has particular significance on that account.

7. The Panel is cognizant of the mental health issues which the Member has raised in support of his attempts to delay proceedings. Where properly advanced, these issues could form the basis for an argument that the Society is bound to accommodate the mental disability of the Member to the point of undue hardship, under the provisions of *The Human Rights Code*, CCSM c. H175 which has paramount status over other statutes of the Legislature, including *The Legal Profession Act*. When the Panel raised this issue with Society Counsel, it was pointed out that the Member did not assert that he suffered from a disability that caused his breaches of integrity. He failed to introduce any evidence of disability in the hearing on misconduct or consequences. The evidence to support a disability that caused misconduct is flimsy at best and does not anywhere state that his mental state influenced his behaviour in misusing funds or lying about meal claims. The Panel is satisfied that no case has been made out that the Member was owed a duty to accommodate, and in any event, it is probable that the harm to the public interest of his behaviour and the bleak prospect for compliant conduct in the future would establish undue hardship to the public if accommodation were provided.

8. As stated in paragraph 40 of the *Rabb*, 2023 MBL 1 Decision, “The purpose of Society discipline proceedings is not to punish, exact retribution from, or humiliate the sanctioned member, but to protect the public interest and to preserve public confidence in the profession”. However, because of the large number of occasions of breach of integrity, the pervasive and persistent scheme that the Member pursued, the absence of any indication of any recognition in the Member that his behaviour was morally wrong, the large amounts of the money of others he used for his own purposes and not for the benefit of those whose money he used, and the complete lack of any attempt to argue for mitigation of the penalty, the Panel sees no alternative but to agree with the submission of Society Counsel that the only sufficient penalty to meet the purposes of *The Legal Profession Act* and *Code of Professional Conduct* is disbarment of the Member and that his name be struck off the rolls and we so order.
9. Society Counsel also submits that we should order costs against the Member and estimates that the costs incurred amount to \$36,000.00 by his conservative estimate. This amount is in line with the costs ordered in *Doolan* and is less than those ordered in some other discipline cases in Manitoba under the *Act*. Counsel outlined the components of the costs and the amount requested seems more than reasonable to this Panel and we therefore order the Member to pay costs of \$36,000.00 to the Society.
10. The Panel raised the question of restitution with Society Counsel, who pointed out that s. 72 of the *Act* does not specifically provide for restitution as a consequence of misconduct and so we could be acting outside our

jurisdiction to make a restitution order. Counsel also advised that the University has already reimbursed the Desautels Fund for its losses at the hands of the Member, and remains as the only victim that is out of pocket. He pointed out that the University has the opportunity to pursue civil remedies from the Member. Counsel was not seeking any order for restitution, other than the costs addressed above.

11. This Panel therefore orders that:

- a. Jonathan Black-Branch be disbarred and have his name struck off the rolls; and
- b. Jonathan Black-Branch pay costs to the Society in the amount of \$36,000.00.

DATED this 14<sup>th</sup> day of February, 2024.



Grant Mitchell, K.C.



Wendy Stewart



Susan Boulter