THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JOHN CARPAY & JAY CAMERON

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date:	August 21, 2023
Panel:	Douglas Bedford (Chair) Dean Scaletta Carmen Nedohin (Public Representative)
Counsel:	Rocky Kravetsky & Ayli Klein for the Law Society of Manitoba Saul Simmonds, K.C. for John Carpay Alex Steigerwald for Jay Cameron

REASONS FOR DECISION

Introduction

1. John Carpay ("Carpay") is a practising member of the Law Society of Alberta ("the LSA"), having been called to the Bar there in 1999.

2. Jay Cameron ("Cameron") is a practising member of the LSA, having been called there in 2008; he is also an inactive member of the Law Society of British Columbia.

3. Neither Carpay nor Cameron is a member of the Law Society of Manitoba ("the LSM"), and neither is a member of any other Law Society aside from those noted above. Neither has any formal discipline history with any governing body of the legal profession in Canada.

4. Carpay was charged with three counts of professional misconduct in a citation dated July 5, 2022 ("the Carpay Citation"):

   (a) one count of failing to treat the Court with candour, fairness, courtesy and respect ("Count 1"), contrary to Rule 5.1 of the LSM *Code of Professional Conduct* ("the *Code*");

(b) one count of undermining the public respect for the administration of justice ("Count 2"), contrary to Rule 5.6 of the *Code;* and,

(c) one count of failing to discharge all of his responsibilities to his client, tribunals, the public and other members of the profession honourably and with integrity ("Count 3"), contrary to Rule 2-1.1 of the *Code*.

The Carpay Citation is attached as Appendix "A" to these Reasons.

5. Cameron was charged in a citation dated August 16, 2023 ("the Cameron Citation") with one count of professional misconduct for failing to discharge all of his responsibilities to his clients, the Court, the public, the [LSM] and other members of the profession honourably and with integrity, contrary to Rule 2-1.1 of the *Code*.

The Cameron Citation is attached as Appendix "B" to these Reasons.

Preliminary Matters

6. The hearing convened on August 21, 2023, and quorum was declared pursuant to sub-Rule 5-93(7) of the LSM *Rules* ("the *Rules*"). Carpay attended the hearing in person; Cameron did not attend either in person or virtually.

7. At the outset of the hearing, counsel for Carpay and Cameron each waived the reading of the relevant Citation, and each confirmed that neither party objected to any of the Panel members either on the basis of bias or conflict, or otherwise.

8. Carpay and Cameron each admitted that they had been validly served with their respective Citations, and each admitted that the LSM, and this Panel, have jurisdiction over them with respect to the allegations set out in those Citations.

9. With respect to jurisdiction specifically, the Panel was advised that:

(a) Cameron appeared as co-counsel in a Court of Queen's Bench (now the Court of King's Bench) matter, Court File No. CI20-01-29284 ("the *Gateway* case"), pursuant to the "temporary mobility" provisions of the Federation of Law Societies of Canada *National Mobility Agreement, 2013* ("the *NMA*");

(b) the misconduct of both Cameron and Carpay took place in Manitoba; and,

(c) the LSA was aware of these regulatory proceedings, and had delegated the conduct of them to the LSM pursuant to the *NMA*.

On the basis of these representations, the Panel was satisfied that it had jurisdiction to deal with the matters which are the subject-matter of these proceedings.

10. Carpay executed a "Statement of Agreed Facts and Joint Submission" on August 18, 2023 ("Exhibit 1"), and Cameron executed a similar but separate document on August

17, 2023 ("Exhibit 2"). They both agreed that the facts and other admissions set out in those statements constituted formal admissions.

11. All parties agreed to the joint hearing, and agreed further that it would be acceptable and appropriate for the Panel to render one written decision dealing with both Citations.

12. The Panel is indebted to all counsel for their cooperation in coming before it with comprehensive statements of agreed facts and for their thoughtful, balanced, and compelling submissions.

Pleas

13. Carpay entered a guilty plea to Count 3 of the Carpay Citation, and the LSM then stayed Counts 1 and 2. He agreed that the conduct to which he had pled guilty constituted conduct unbecoming a lawyer.

14. Cameron entered a guilty plea to the one count in the Cameron Citation. He agreed that the conduct to which he had pled guilty constituted professional misconduct.

Joint Submissions

15. The joint submission on behalf of Carpay requested that this Panel dispose of the matters by finding that his conduct, as detailed in the Particulars of the Carpay Citation and in his Statement of Agreed Facts, constituted conduct unbecoming a lawyer, and by ordering that he:

    (a) be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

    (b) pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

16. The joint submission on behalf of Cameron requested that this Panel dispose of the matters by finding that his conduct, as detailed in the Cameron Citation and in his Statement of Agreed Facts, constituted professional misconduct, and by ordering that he:

    (a) be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

    (b) pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

17. The Panel heard submissions from Ms. Klein (for the LSM), Mr. Simmonds (for Carpay), and Mr. Steigerwald (for Cameron), and it permitted Mr. Carpay to read into the record a personal statement of apology to the individuals and entities affected by his conduct.

18. The Panel adjourned to consider the submissions then returned to advise, on the record, that it had resolved to accept both joint submissions, with written reasons to follow. These are those reasons.

Statements of Agreed Facts

19. Many of the provisions of Exhibits 1 and 2 (the two Statements of Agreed Facts) are identical, or nearly so. Except where otherwise indicated, the facts set out below have been expressly agreed to by both Carpay and Cameron.

20. At all relevant times, both Carpay and Cameron:

    (a) met the temporary mobility requirements under the *NMA*;

    (b) were entitled to engage in the practice of law in or with respect to the law of Manitoba subject to the temporary mobility terms and conditions of the *NMA*;

    (c) did so engage in the practice of law in or with respect to the law of Manitoba under those temporary mobility provisions; and,

    (d) while so engaged, were required to comply with the applicable legislation, regulations, rules, and standards of professional conduct of Manitoba.

21. Carpay founded the Justice Centre for Constitutional Freedoms (the "JCCF") in 2010. At all material times:

    (a) Carpay was the President of the JCCF;

    (b) Cameron was its Director of Litigation; and,

    (c) both were employed by it in their capacities as lawyers.

22. The JCCF describes itself on its website as "a Canadian legal organization and federally registered charity that defends the constitutional freedoms of Canadians, through *pro bono* legal representation and by educating Canadians about the free society".

23. In 2020, the JCCF undertook to fund the Applicants in the *Gateway* case in a proceeding which challenged the constitutional validity of public health restrictions imposed by the government of Manitoba and, in particular, by its Provincial Health Officers, in response to the COVID-19 pandemic. The Applicants were three individuals and seven religious organizations; the Respondents included the provincial government and two of its senior Provincial Health Officers. Carpay assigned conduct of the matter to Cameron and two other lawyers whose conduct is not under review in these proceedings.

24. A ten-day contested hearing before Chief Justice Glenn Joyal of the (then) Manitoba Court of Queen's Bench concluded on May 14, 2021, at which time he reserved his decision and adjourned the matter until such time as he was ready to deliver judgment. The decision remained on reserve until October 29, 2021.

25. On June 8, 2021, Cameron sent two emails to Carpay. Cameron had received unverified information that some notable government representatives in both Manitoba and Alberta may have been observed breaking public health orders.

26. In the first email, Cameron proposed hiring private investigators "to get pictures of a few key people breaking health orders", and using any proof of officials breaching the public health restrictions in an Affidavit to potentially support an argument that the orders were arbitrary. He described the proposed surveillance as a "legitimate litigation expense".

27. In the second email, Cameron wrote: "I'd like to add CJC (*sic*) Joyal to that list."

28. In early June, 2021, Carpay proceeded to hire a local private investigation firm to conduct passive covert surveillance of the then Premier of Manitoba and the Chief Provincial Health Officer with a view to obtaining information concerning their compliance with the public health orders which were then in place.

29. Carpay later explained (during court proceedings on July 12, 2021, described in more detail below) that the position of the JCCF on this issue was that "the public has a right to know whether or not government officials are complying with public health orders. [...] We believe that the surveillance and observation of public officials is legitimate and legal."

30. Cameron did not have any direct communication with the private investigator ("the PI") until July 9, 2021 (described in more detail below).

31. In an email to the PI dated June 16, 2021, Carpay wrote: "I suggest you commence surveillance of Premier Pallister to catch him breaking rules, and further watch Chief Justice Glenn Joyal of the Manitoba Court of Queen's Bench." No other judges or justice system participants were placed under surveillance.

32. On June 28, 2021, Carpay received an email from the PI with an attached document reporting on the progress of the surveillance up to that time. The report (which was not in the materials provided to the Panel) indicated that Chief Justice Joyal had been observed riding in a car with an unidentified adult female and that neither was wearing a mask.

33. The following day (June 29, 2021), several emails were exchanged between Carpay and the PI. The relevant portions of the email exchange read:

    (a) Carpay (11:20 AM): "[Cameron] and I are of the view that Joyal could be in violation of the rules if the female that he was with was not his wife (or person resident in his household). What would be ways of finding out her identify? As for further surveillance, likely best to put a stop to it for now, unless you have good reasons for suggesting continuation."

(b) PI (11:29 AM): "With regards to Joyal I would say that she isn't part of his household and we can see what we can do to find out her identify. If anymore would be needed on him it would be better to do afternoon/evenings during the week. We can see if he keeps driving people after work as well that way. He probably goes to the lake every weekend so we wouldn't be able to get much if he's there."

(c) Carpay (11:44 AM): "Would you be so kind as to copy [Cameron] on your emails to me? He is our Litigation Director, and we are making decisions together. If we don't know for sure that the woman is not part of Joyal's residence, we need to get confirmation. *No point in turning this over to the media if this judge has a good, compelling, persuasive justification for traveling in the car with her.* We need to have our ducks lined up ahead of time, so to speak." (Emphasis added.)

(d) PI (12:31 PM): "Ok thanks will do. We will try and see who she is. Like I said it may be a good idea to put a few hours on the judge next week after work and see if he has the same routine taking the female home."

34. On July 6, 2021, several more emails were exchanged between Carpay and the PI. The relevant portions of that email exchange read:

(a) Carpay (12:57 AM): "Please do get info on the un-masked female that he was with, especially if it was contrary to the rules to drive in a car with a stranger not living in your own household. *Info on the female would be valuable and appreciated.*" (Emphasis added.)

(b) PI (8:16 AM): "Ok thanks John. I had a guy set up this afternoon to go out to the judge for the next few afternoons/evenings is that still ok." (*sic*)

(c) PI (9:27 AM): [Note: The text of this email was not reproduced in the evidence.]

(d) Carpay (3:04 PM): "Yes, we can do some more surveillance on Joyal. *However, please make it a top priority to find out the identity of the woman he was with … this could be extremely valuable if he broke the rules.*" (Emphasis added.)

(e) PI (3:23 PM): "Yes we are trying to find that out and see what we can get. We will see what more we can get on him [Chief Justice Joyal] over the next few afternoon/evenings".

35. The final email in evidence was sent from the PI to Carpay at 10:52 PM on July 8, 2021, after the Winnipeg Police Service discovered his firm had had Chief Justice Joyal under surveillance. It reads: "John can you give me a call back tomorrow morning- Friday. Need to discuss surveillance on the Judge we were on as he picked up on surveillance so I want to clear a couple things with you before discussing any more with the Police about the issue."

36. Cameron spoke with the PI twice (by telephone) the following day (July 9, 2021). Carpay has no knowledge of the contents of those conversations and neither admits nor denies what the parties to those conversations allege.

37. Cameron says that he called the PI directly as he had been unable to reach Carpay. He says that this was the first time he had spoken to the PI. Cameron told the PI to cease all surveillance and "delete everything", including all correspondence between the PI and Carpay. He said that he had spoken to Carpay and that Carpay had directed those instructions. Cameron also conveyed a request from Carpay that the PI not divulge to the police who had hired his firm to conduct the surveillance of Chief Justice Joyal.

38. On July 12, 2021, the Chief Justice Joyal convened a court hearing involving almost all of the counsel who had appeared on the *Gateway* matter (two being unavailable); all counsel, including Carpay and Cameron, attended by video. Several journalists and members of the public also attended in the same manner. What transpired during that hearing is set out in more detail below under the heading "Court Proceedings on July 12, 2021".

39. A request by Cameron to go *in camera* was, after some discussion, granted by the Chief Justice. While *in camera*, Carpay revealed to the Court, for the first time, that he had retained the PI on behalf of JCCF in order to determine whether government officials were complying with public health orders; he stated that the surveillance had "nothing to do with the [still pending *Gateway*] litigation". Carpay stated further that the surveillance was not "targeted" at the Chief Justice.

40. During both the *in camera* session and the public session which followed, Cameron failed to comment or provide correction when Carpay asserted to the Court that the use of the information uncovered by the surveillance had "nothing to do with the litigation" and other comments to that effect.

41. While *in camera*, Cameron was asked directly whether he knew about the surveillance of the Chief Justice. He initially answered that he "had some inkling" but was "not privy to the...instructions that were provided. I was not privy to the retainer."

42. When asked whether he became aware of the surveillance, Cameron answered that he "became aware of it to some extent, uh, later on", and that he "was not involved at the outset, as far as the retainer".

43. Cameron was then asked by the Chief Justice: "When did you find out [about the surveillance of him]?" Cameron initially said that he "would have to go back and look at my notes", but the Chief Justice pressed for a more definite time frame. Eventually, Cameron stated: "I've known for at least a couple weeks, my Lord. Um, so I-I, uh, at least I, I mean here I am, here I am saying that it's been a couple of weeks. To be honest with you, I would have to go back and look. Uh, it's, uh, I'm not sure. ..."

44. After the Court went back on the public record, the Chief Justice provided an overview of the circumstances; he described the involvement of Cameron as follows:

> "... the organization that Mr. Carpay represents and Mr. Carpay hired the private investigator to conduct the surveillance of me as a so-called public figure. And Mr. Cameron, as counsel for the applicant, was not party to the retainer but became aware of it a couple of weeks ago."

45. Again, Cameron did not comment or provide correction to this timeline.

46. Both during the *in camera* session and after the Court went back on the public record, Cameron and Carpay each apologized to the Chief Justice. On both occasions, the Chief Justice acknowledged and accepted the apologies. Cameron further stated to the Chief Justice that he would never attempt to intimidate a member of the judiciary, nor to influence the outcome of any decision of the Court in any case.

47. In his reply to a letter from the LSM seeking his response to the allegations against him, Cameron denied responsibility for and involvement in the decision to commence surveillance on the Chief Justice. He repeated his claim that he had learned of the surveillance approximately two weeks prior to the July 12, 2021 court appearance.

48. At some point after July 13, 2021, Cameron deleted the entire contents of his Outlook mailboxes (including the Inbox, the Sent Items, and the Deleted Items), which included all of the communications with the PI. [Note: While this same admission is found in his own Statement of Agreed Facts, Carpay – through his counsel – explained that these particular deletions were part of a massive purging of "tens of thousands" of emails which he and others at JCCF had undertaken in response to a suspected hack of their email system. The Panel was also advised that the email communications between Carpay and the PI were ultimately recovered and disclosed to the LSM in furtherance of its investigation.]

The Court Proceedings on July 12, 2021

49. The opening monologue by the Chief Justice includes the following remarks:

    (a) "I am currently working on my reasons for decision respecting the administrative and constitutional challenge brought by the applicants in the present case."

    (b) "On July 8th, 2021, last week, after having left the Manitoba Law Courts building parkade, and while driving around the City of Winnipeg to do various errands, I discovered that I was being followed by a vehicle, a vehicle that I did not recognize. I have since learned that I was being followed by someone who was working for a private investigation agency. The private investigation agency was apparently hired by a person or persons for the clear purpose of gathering what was hoped would be potentially embarrassing information in relation to my compliance with COVID public health restrictions."

    (c) "The City of Winnipeg Police Service was called in, as was the Government of Manitoba's internal security and intelligence unit. I am told that the investigation is ongoing but the nature of the private investigation agency's retainer, that retainer has been confirmed. The agency was indeed hired by a person or persons or organization to follow me for the purposes of surveilling – surveilling me for any non-compliance with COVID-19 health restrictions."

    (d) "… [T]o date the private investigation agency has not disclosed who hired them to conduct this surveillance clearly designed for the purpose of gathering potential

information that might embarrass me in respect of any potential non-compliance with public health restrictions."

(e) "... *[T]he situation I have just described raises the spectre of potential intimidation and it can also give rise to possible speculation about obstruction of justice, direct or indirect.* ... I am deeply concerned and troubled that this type of private investigative surveillance and conduct could or would be used in any case, in any case involving any presiding judge in a high profiled adjudication." (Emphasis added

(f) "... If we are now in an era where a sitting judge, in the middle of a case, can have his or her privacy compromised as part of an attempt to gather information intended to embarrass him or her and perhaps even attempt to influence or shape a legal outcome, then we are indeed in uncharted waters."

(g) "... I assume unhesitatingly that no party in this case had anything to do with the private investigation that I have described, directly or indirectly. For the purpose of this case, nothing about the information with which I am now in possession in any way will influence me or prevent me from impartially assessing the evidence and conducting the necessary analysis that I must conduct to make the determination I am required to make to decide the administrative and constitutional issues in this case."

50. After hearing brief comments first from Cameron and then from counsel for the Government of Manitoba, the Chief Justice invited further submissions from Cameron on the issue of his request that the proceeding go *in camera*. Cameron replied: "My Lord, there are three reasons specifically. Client confidentiality needs to be protected. The administration of justice, as you've said, needs to be protected. This is not necessarily a matter for which the public as a right to – to know about. I think that would – should be up to Your Lordship after you have heard in-camera proceedings. And also, My Lord, there are professional implications to how we would address the Court and what we would say to the Court. And so we're asking – we're asking on this motion to go in-camera for those reasons, My Lord."

51. The public portion of the hearing was then adjourned and a 31-minute *in camera* session took place. During this session, there were several tense exchanges between Chief Justice Joyal and both Carpay and Cameron. The incredulity and dismay with which the Chief Justice responded to the revelation that it was the two JCCF lawyers who had arranged the surveillance of him, and to their stated justifications for having embarked on such an endeavour, is manifestly evident from the transcript.

52. The public hearing concluded with Chief Justice Joyal agreeing, with the consent of counsel for all of the litigants, to continue with the task of writing his decision in the *Gateway* case.

53. On October 29, 2021, Chief Justice Joyal delivered Reasons for Judgment dismissing the application, and upholding the constitutional and legal validity of the impugned public health restrictions. In supplementary Reasons delivered on February 1, 2022, the Chief Justice declined to order costs against the Applicants. An appeal to the Manitoba Court of Appeal was dismissed by that Court on June 19, 2023.

Relevant Statutory& Other Provisions

54. *Federation of Law Societies of Canada – National Mobility Agreement, 2013* Clauses 1 ("disciplinary record"),11(d), (e), & (f), 14, 27, 28, & 29

The Legal Profession Act ("the *Act*")
Sections 3(1), 3(2), 64(1), & 72(1)(e) & (k)

Code of Professional Conduct
Rule 2.1-1 and Commentary [2] & [3]

Law Society Rules
Rules 3-62(1), 3-64(1), 3-70(5), & 5-96(7)

The full texts of these provisions are attached as Appendix "C" to these Reasons.

Relevant Authorities and Principles

55. The LSM provided a Book of Authorities in advance of the hearing. The applicable law with respect to determining an appropriate sanction in cases of serious professional misconduct is reasonably well-settled, as is the law with respect to joint submissions for resolution. For present purposes, it will only be necessary to cite a few of the many authorities which have been brought to the attention of the Panel in this and other LSM discipline matters.

General Principles of Professional Discipline

56. The Panel is indebted to prior Discipline Panels of the LSM which have articulated the principles applicable to cases similar to this one. These principles (in no particular order of importance) include the following:

(a) The purposes 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.

(*The Law Society of Manitoba v Nadeau,* 2013 MBLS 4, citing *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012)

(b) The discipline hearing panel focuses on the offence rather than the offender, and considers the desirability of parity and proportionality in sanctions, and the need for deterrence. … The panel also considers … aggravating and mitigating factors [which] include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, …, the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state.

(*Nadeau*, citing *Lawyers & Ethics: Professional Responsibility and Discipline)*

(c) Other relevant considerations (derived from the list of so-called "*Ogilvy*" factors) include: (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

disciplines; (d) the impact upon the victim; ... (g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; ... (h) the impact on the respondent of criminal or 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.

(*Nadeau*)

(d) 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 applied.

(e) Integrity is the foundation of the legal profession. It is first rule in the *Code* and every other rule reflects it. Clients and the courts must have faith that lawyers are totally trustworthy.

(*The Law Society of Manitoba v McKinnon*, 2010 MBLS 5)

(f) ... [T]here is a distinction between circumstances mitigating the misconduct which directly address why a member committed an offence (and hence the degree of perceived culpability) and factors offered in mitigation that arose or were exacerbated by the offence and the adjudicative process that followed or are simply incidental. For example, a distinguished career, embarrassment, and a guilty plea are all commonly offered as "mitigating factors". An assessment of the nature of a mitigating factor (i.e. whether a factor offered in mitigation relates to why the offence was committed, or relates to a consequence of having committed the offence or is just incidental) is necessary to properly weigh its impact on an appropriate disposition.

(*MacIver*)

(g) ... [W]hile it is never appropriate to impose a penalty with the desire to publicly humiliate a member, stigma resulting from the imposition of a proper penalty is generally an unavoidable byproduct of a lawyer's misconduct.

(*MacIver*)

(h) Revocation of a lawyer's entitlement to practise is the most severe penalty that can be imposed as professional discipline. It ends the lawyer's career and hence removes the risk of harm to the public. The penalty sends a message to the public at large and to the legal community that the relevant professional conduct is condemned by the Law Society and by the legal profession.

(*The Law Society of Upper Canada v Ronen*, 2017 ONLSTH 89)

Joint Submissions

57. A discipline panel should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

58. To be contrary to the public interest means the joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the [professional discipline process]".

59. "Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper function of the [professional discipline process] had broken down. This is an undeniably high threshold – and for good reason."

    (*Law Society of Manitoba v Sullivan*, 2018 MBLS 9, citing *Anthony-Cook v Her Majesty the Queen*, 2016 SCC 43)

Submission on Behalf of the LSM

60. Ms. Klein canvassed the general principles of professional discipline and the settled law with respect to joint submissions. She noted the salient admissions in each of the Statements of Agreed Facts, and invited the Panel to draw the inference that both Cameron and Carpay responded to questions from the Chief Justice at the July 12, 2021 court hearing in a manner that lacked both candour and integrity.

61. She argued that there were a number of aggravating factors in play, the most significant of which were the demonstrable breaches of the duty of integrity exhibited by both lawyers. She asserted that their actions brought the administration of justice into disrepute, and tarnished the reputation of the legal profession as a whole.

62. Ms. Klein acknowledged that there were mitigating factors as well, not the least of which were the guilty pleas, the good faith negotiation of joint submissions, and the absence of any prior discipline record for either party. She noted that the proposed resolution would result in a permanent record of the misconduct of each of the parties that would follow them for the rest of their legal careers, regardless of where in Canada they choose to practise.

63. Speaking in support of the joint submission, Ms. Klein noted the egregious and, indeed, "unprecedented" nature of the misconduct, and submitted that the proposed resolution is a significant and appropriate penalty which adequately protects the public. It is, in fact, the most serious sanction open to the Panel to impose in light of the fact that neither lawyer is a member of the LSM. Further, it is debatable whether the LSM even has the authority to strike the names of the lawyers from the rolls of another law society, in this case the LSA.

64. She urged the Panel to accept the joint submissions and to take the opportunity to impress upon both the public and the profession that there can be no tolerance for the type of conduct in which these parties engaged.

Submission on Behalf of Carpay

65. Mr. Simmonds described the actions of his client as "foolhardy, misguided, and inappropriate". He reiterated the position of Carpay that there was never any intention to interfere with the *Gateway* proceeding, nor to influence in any way its ultimate result. He did take issue with the position of LSM counsel that the permanent prohibition on any future practice in Manitoba amounted to a "*de facto* disbarment".

66. He noted that this misconduct occurred at a time when the country, and indeed the world, was in the throes of a crippling pandemic which had prompted many governments in Canada and elsewhere to impose severe constraints on the types of fundamental rights and privileges that many Canadians had come to take for granted. These measures were controversial and divisive. For someone like Carpay, who had spent his career advocating for governmental respect for the individual rights enshrined in the *Canadian Charter of Rights and Freedoms*, and educating the public and his clients with respect to those rights, this was an especially difficult time.

67. Speaking in support of the joint submission, Mr. Simmonds argued that the proposed resolution is an onerous one which appropriately reflects the severity of the impugned conduct. Carpay is still facing criminal charges in Manitoba, and could potentially face disciplinary proceedings before the LSA. Accordingly, the resolution of these proceedings (and presumably the criminal charges) will have far-reaching and long-term impacts on Carpay. He has, for many years, had a pan-Canadian legal practice; his ability to practise outside of his home jurisdiction of Alberta will now be seriously curtailed by the *NMA* requirement that he apply for a temporary mobility permit in every other host jurisdiction where he wishes to work, and to advise each of those host governing bodies of this disciplinary record in Manitoba.

Submission on Behalf of Cameron

68. Mr. Steigerwald endorsed the submissions of Mr. Simmonds and also spoke in support of the joint submission.

69. With respect to the deletion of the PI emails and reports, Mr. Steigerwald reiterated that those materials were not "selectively deleted" and that those actions were taken by Cameron and other JCCF personnel to protect their email information generally from hackers.

70. He argued that the surveillance which was undertaken was not intended to gather evidence for use in the *Gateway* matter, nor to intimidate the Chief Justice or to influence the decision in the case, but rather to be potentially used to embarrass public officials or perhaps provide support for a future court argument that the measures being challenged were "arbitrary" and, therefore, in breach of the *Charter*. He nevertheless acknowledged that his client had failed to recognize the distinct constitutional protections afforded to judges in Canada, and had failed to appreciate their obligation to fulfill their roles independently of outside influences.

71. Mr. Steigerwald noted that Cameron had specifically denied early knowledge of the details of the *retainer* of the PI, and of the actual commencement of the surveillance of the Chief Justice. He conceded that Cameron *should* have been "more candid" with the Chief Justice during the court proceedings, especially because it was so obvious that he specifically wanted to know whether any surveillance had taken place while the hearing itself was still in progress.

72. In terms of mitigating factors, Mr. Steigerwald argued that:

    (a) Cameron is a sole practitioner whose practice is "not very active" and that he no longer has any active cases with the JCCF;

    (b) he is still facing criminal charges in Manitoba and may potentially face professional discipline in Alberta;

    (c) he is 45 and has no source of income beyond his law practice with which to support himself and his family;

    (d) at the time of the misconduct, he was heavily involved with COVID-19 litigation on behalf of individuals whose rights were being severely restricted and who were looking to the legal system for redress such that the stress of this work contributed to his poor judgment in the Manitoba litigation;

    (e) while Cameron has no prior discipline history, his professional reputation has been "irreparably tarnished";

    (f) his ability to practise will be severely impacted by the penalty being proposed; and,

    (g) he has pled guilty to the Cameron Citation and has accepted responsibility for his conduct.

Reply on Behalf of the LSM

73. Ms. Klein submitted that the *Gateway* case was not "over" when the surveillance of the presiding judge was undertaken; the judge still had his decision on reserve and could not yet be considered *functus officio*. Further, the *King's Bench Rules* specifically contemplate the re-opening of a concluded proceeding, prior to judgment being rendered, to receive new and relevant evidence, or to consider a new and binding authority issued while the decision remained under reserve.

74. With respect to expressed lack of nefarious intentions regarding the use to be made of the results of the surveillance, she noted that the emails reproduced in the materials are the "best evidence" of the intentions of the parties and that it was open to the Panel to draw appropriate inferences from those emails. In particular, Ms. Klein noted the characterization of the proposed surveillance by Cameron as a "legitimate litigation expense".

Analysis

75. Counsel for the LSM advised the Panel that the proposed bans were "the most severe penalty open to the Panel to impose". The Panel was advised that because Carpay and Cameron were, at the relevant times, "visiting lawyers" pursuant to the *NMA* and not "members" of the LSM, it was not open to the Panel to make an order of disbarment with respect to either of them; only their home governing body – the LSA – can do that.

76. The central issue here is whether the proposed sanction is appropriate in the circumstances; whether the misconduct proven (and, indeed, expressly admitted) warrants the punishment to be imposed pursuant to the joint submission.

77. The starting point for the analysis is, therefore, the conduct itself. The conduct in question consists of two elements. First, the recommendation, decision, and act of hiring a private investigator to spy on the Chief Justice while he had on reserve a decision on the constitutional validity of health orders with a view to observing him violating those same health orders. And secondly, when asked directly in court by the Chief Justice about the surveillance, failing to state forthrightly and precisely who had recommended the surveillance, and for what purpose, so far as the Chief Justice and the courts were concerned.

78. This case may well be one of first instance. The Panel was not referred to any authority from any Canadian law society where the conduct under scrutiny involved the covert surveillance of a sitting judge, let alone a judge who had presided over a matter where the hearing had concluded but the judgment had yet to be rendered.

79. At the extraordinary hearing before Chief Justice Joyal on July 12, 2021, during both the public and *in camera* sessions, Carpay repeatedly characterized his conduct as an "error in judgment". It was more than that. As his counsel said, it was "stupid".

    Even as understatements go, this self-characterization of the impugned conduct was an astonishing one; rather akin to describing the sinking of the Titanic as "an unfortunate boating accident".

80. While Carpay and Cameron both disclaim any *intention* to "target" or intimidate the Chief Justice, or to influence the outcome of the judicial matter of which he was seized at the time when the covert surveillance of him was undertaken, those stated intentions are, in our view, not determinative. There remains an inescapable *perception* that the integrity of the administration of justice was put at serious risk by the conduct of these two lawyers such that a reasonably informed member of the public could be justifiably concerned that the course of justice in the case had been if not subverted, at the very least adversely affected.

81. If the results of the surveillance were really *not* intended to be filed in the *Gateway* matter, one might legitimately ask (as the Chair of the Panel did): "What, then, *would* be the purpose of gathering this new evidence?" and "Where *would* the anticipated Affidavit (containing a description of the surveillance) be filed if not in the *Gateway* matter?"

82. The Panel finds the rather unsatisfactory explanations put forward by the parties to be unconvincing. It was suggested that had the Chief Justice been observed violating the health restrictions, the evidence of this violation would not have been released until after he had

rendered his decision. But surely, if this was the "grand plan", doing so would serve to seriously discredit as hypocritical and derisory any decision that upheld the health restrictions. Alternatively, it was suggested that any evidence of the Chief Justice violating the health restrictions may have been used in a future challenge of those restrictions as an illustration that those who make or enforce such restrictions felt at liberty to ignore them personally and hence must not be persuaded that they are truly necessary.

83. Notwithstanding the alternative explanations offered by Carpay and Cameron for including Chief Justice Joyal on the list of the subjects of their covert surveillance, the Panel concurs with counsel for the LSM that one ought to infer that both parties meant exactly what they said in their email communications on June 8, 2021, June 16, 2021, June 29, 2021, and July 6, 2021. In spite of their protestations to the contrary, it does appear that in June, 2021, the two lawyers fervently hoped to secure evidence that "public figures", namely the Premier of the province and the Chief Medical Officer (who had testified at the hearing in May, 2021), were violating the very health orders under review, and that such violations, if they were observed, would be somehow even more compelling if the very judge reviewing the health orders was also seen violating those same orders.

84. The Panel notes in passing that while Carpay spoke of his extreme consternation upon learning that the PI had made direct contact with at least one member of the Joyal household, there is no evidence before this Panel that such contact was (as he asserts) expressly prohibited by the terms of the retainer with the agency. The emails in which Carpay urgently exhorts the PI to determine the identity of the "un-masked female" contain no such prohibition, and one is hard-pressed to imagine how that particular objective could have been achieved without *some* direct contact with *somebody* close to the Chief Justice.

85. The Panel finds the following statements by Cameron during the court proceedings of July 12, 2021 were blatantly and intentionally false:

    (a) that the Chief Justice was not "targeted" for surveillance (when clearly he was);

    (b) that Cameron himself had not been involved at the outset in the decision to include the Chief Justice on the list of those who were to be put under covert surveillance (when it was he who wrote: "I'd like to add CJC Joyal to that list."); and,

    (c) that he had only been aware of the surveillance "for a couple of weeks" at the time of the hearing (when he was a party to an email discussion with Carpay on June 8, 2021, more than a month earlier), and that he did not read an email of June 16, 2021 which indicated that the Chief Justice was now to become the subject of surveillance.

        His assertion to the effect that he was unaware of the particulars of the *retainer* of the PI may have been technically correct, but that statement was undoubtedly misleading and, the Panel believes, intentionally so. A half truth can be, after all, as damaging as a complete lie, and thus indistinguishable from a total fabrication.

86. While the wholesale purging (and subsequent recovery) of their JCCF Outlook accounts by both Carpay and Cameron may have been justified to shield their content from outside hackers, the directives from Cameron to the PI to "delete everything" that he had regarding the surveillance of the Chief Justice, including all correspondence between the agency and

Carpay, and to refrain from telling the police who had hired him, cannot reasonably be seen as anything other than a deliberate attempt to conceal the misconduct from the police, the courts, and the regulators. If the intention of the surveillance had been simply to secure evidence that "public figures", such as the Premier and the Chief Medical Officer, were violating health orders, one would think that there would be no need to instruct the PI to "delete everything". If that were really the case, there would be no concern about disclosing to the police that the JCCF was involved as part of its mandate of keeping watch on the public behaviour of "public figures".

87. With respect to the *Ogilvy* factors listed in Para. 56(c), the Panel notes that:

(a) The seriousness and gravity of the misconduct in this case can hardly be overstated. Integrity is the very foundation of the conduct which the public and all of the participants in the justice system have a right to expect from every person who practises law in Manitoba. When that trust is broken, it is a very serious matter. If lawyers and litigants (or even strangers to the litigation) start spying on judges hearing the cases in which they are involved (or otherwise interested in) with a view, however muddled or "stupid", that something might turn up that will aid them in securing a favourable outcome to the litigation, the judicial system will be sorely discredited. Judges rely daily on the answers lawyers give them to questions about clients, witnesses, relevant case law, relevant evidence, process, and the like. If lawyers are to be permitted to answer those questions with "half truths", with less than full candour, or with lies where the answers may tend to embarrass the lawyer, then the judicial system itself will be severely impaired.

(b) Neither lawyer was new to the practice of law; Carpay had been practising for 22 years and Cameron for 13 years when the misconduct occurred. Youth and inexperience do not come into play with respect to the conduct of these two lawyers.

(c) However, neither lawyer has any prior professional discipline history and this does merit some favourable consideration.

(d) No person likes to be spied upon and in some instances, that spying amounts to "stalking" which leads to a tragic outcome. While no direct evidence was presented to the Panel regarding the impact of the surveillance on the Chief Justice and his family other than his few short comments during the *in camera* proceedings of July 12, 2021, the Panel acknowledges that there must have been some consternation in the moment when it came to the notice of the Chief Justice that he was being followed. Judges are not "public figures" in their private lives, and outside of their jobs, they are as entitled as any other private citizen to peace and quiet, and to "freedom from unwanted surveillance".

(g) Both lawyers offered an apology to the Chief Justice during the *in camera* session on July 12, 2021, and both repeated it when the public session resumed. The Chief Justice accepted the apologies in open court. Carpay also wrote a letter of apology to the Chief Justice soon after his decision in the *Gateway* case had been released, and he reiterated his remorse in the personal statement which he read at the discipline hearing on August 21, 2023. Apologies matter and it is to the credit of both Carpay and Cameron that they did apologize at an early date. It is important to this Panel that the

Chief Justice accepted the apologies, albeit with the observation that both lawyers would have to answer for their conduct in due course.

(h) Both lawyers are still facing criminal charges in Manitoba; the Panel was told that those charges are expected to be resolved shortly, with consequences to each of them that will be onerous. They may also face further professional disciplinary proceedings in their home jurisdiction of Alberta, although none have yet been initiated by the LSA. While the fact that there are other proceedings arising from the same facts is of note, we do not find that this makes the joint recommendations either more, or less, suitable. As stated, the Society says that the penalties proposed are the most serious that are available to us.

(j) The Panel was told that the impact on both parties has already been significant. Their ability to practise outside of Alberta has been severely curtailed, their professional reputations are in tatters, and – in the specific case of Cameron – what remains of his once-robust practice is minimal.

(k) We do not believe that either Carpay or Cameron will ever again hire a private investigator to conduct surveillance on a sitting judge. Further, we do not believe that the vast majority of lawyers practising in Manitoba and, indeed, in Canada, would ever contemplate doing so. However, as a warning to the few who *might* consider engaging in similar conduct, we condemn in the strongest possible terms the conduct which Carpay and Cameron admit was improper and unethical.

Lest there be any doubt on this point, what the Panel is saying is this: It is unacceptable for a lawyer, any lawyer, to arrange for – or even condone – the covert surveillance of a sitting judge, any sitting judge, under any circumstances, or for any purpose whatsoever. Full stop. No exceptions. The independence of the judiciary and the integrity of the administration of justice are simply too important to the rule of law to be jeopardized by such conduct.

(l) While the reputation of the legal profession was undoubtedly tarnished by this sorry affair, we hope that the manner in which the matter was resolved by the LSM, the lawyers, and their counsel will go a long way to restoring and maintaining public confidence in the ability of the LSM to effectively regulate lawyers in the public interest.

88. Taking all of the above factors into account, the Panel is satisfied that the proposed sanction is an appropriate one and it has no hesitation in accepting the joint submissions.

Final Comments

89. Democracy in Canada can be a fragile institution at times, and it is supported by several pillars which are by no means unassailable. One of those pillars is an independent judiciary, and those who fulfill the important role of a judge must be free to perform their duties "without fear or favour" from any outside influence. In particular, courts should not be subject to improper influence from the other branches of government or from private or partisan interests.

90. The website of the Canadian Judicial Council has this to say about "judicial independence":

> A fundamental principle is [that] at the heart of the Canadian judicial system is its *independence*. The "separation of powers" guarantees Canadians that the legislative, executive and judicial powers in Canada will be autonomous and independent of each other. The legislature defines the law, the government ensures its application and the courts interpret it.
>
> When a dispute is brought before the courts, both parties must be convinced that the judge will render a decision based only on the law and the evidence submitted. Judges must be completely impervious to any outside influence, whether governmental, political, family, organizational or other.
>
> In short, judicial independence is essential for Canadians to have confidence in their justice system. We must be convinced that the judge will render a decision based on his or her conscience, in full respect of the oath of allegiance taken when the judge was appointed.

91. Judges must have no fear of being subjected to harassment or physical harm when they are sitting on controversial cases. These cases must be adjudicated in the environment of a fair and impartial judicial process, and society simply cannot tolerate having judges shying away from making unpopular (yet still necessary and legally sound) decisions because of concerns for their personal safety or the safety of those close to them. The harassment of one judge is a psychological threat to all judges, and cannot be tolerated in a free and democratic society.

92. It is not too strong a statement to say that judicial independence came under attack on June 8, 2021 when Carpay and Cameron first conspired to gather potentially embarrassing evidence on the private activities of one of the most high-profile members of the Manitoba judiciary, and then again on July 12, 2021 when they actively misled the court during a hearing when their misconduct first came under scrutiny.

93. But while the principle can be a fragile one, it is also resilient. In the end result, the justice system worked as intended, and the *Gateway* case was concluded in a manner which respected judicial independence and upheld the rule of law.

Disposition

94. The Panel orders that:

    (a) Carpay be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba;

    (b) Cameron be permanently banned from engaging in the practice of law physically in Manitoba except with respect to the law of a home jurisdiction, or physically in any other jurisdiction with respect to the law of Manitoba, or providing legal services respecting federal jurisdiction in Manitoba; and,

(c) They each pay $5,000 as a contribution to the costs of the LSM investigation and prosecution of the charges.

DATED this 15th day of September, 2023.

Douglas A. Bedford
Douglas Bedford

Dean O. Scaletta
Dean Scaletta

Carmen Nedohin

Appendix "A"

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JOHN CARPAY

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

CITATION

TO: **JOHN CARPAY** of the City of Calgary, in the Province of Alberta, lawyer, and a member of The Law Society of Alberta.

TAKE NOTICE that a hearing will be held by a panel of the members of the Discipline Committee of The Law Society of Manitoba to consider charges of professional misconduct laid against you by the Complaints Investigation Committee of The Law Society of Manitoba. If you are found guilty of professional misconduct, you may be barred or suspended from practicing law in Manitoba or you may otherwise be dealt with by the

Discipline Committee panel under the provisions of *The Legal Profession Act* and the *Rules of The Law Society of Manitoba*. A statement of the charges is as follows:

As particularized in paragraphs (a) to (c) below, in connection with your involvement in the *Gateway Bible Baptist Church et al. v Manitoba et al.* matter (Court of Queen's Bench File No. CI-20-01-29284), between approximately June 2021 - July 2021, you:

1) failed to treat the Court with candour, fairness, courtesy and respect;
2) undermined the public respect for the administration of justice;
3) failed to discharge all of your responsibilities to your client, tribunals, the public and other members of the profession honourably and with integrity;

and thereby you acted contrary to Rules 5.1, 5.6, and 2.1-1 of the *Code of Professional Conduct.*

Particulars

a) In or about June 2021, you hired Chase Investigations to conduct surveillance of Chief Justice Joyal, the Presiding Judge who at the time had reserved his decision in the ongoing legal matter.

b) In July 2021, upon becoming aware that the surveillance had been detected, you deleted all of the information and evidence that you had in your possession which related to your having arranged for the surveillance of Chief Justice Joyal, and:

i. you directed Jay Cameron to instruct Chase Investigations to delete all information that they had which related to their surveillance of Chief Justice Joyal.

c) On July 12, 2021, you failed to be candid when called upon by the Court to explain your actions as they related to the surveillance, by:

i. stating that the surveillance was not "targeted" at the Chief Justice;

ii. stating that the surveillance "has nothing to do with the litigation";

iii. stating that you "don't have any pictures or other information whatsoever";

when each of these was not the case.

YOU OR YOUR COUNSEL are required to appear before the Chairperson of the Discipline Committee or his designate on **August 9, 2022 at 12:00 noon,** at the offices of The Law Society of Manitoba, 200 - 260 St. Mary Avenue, Winnipeg, Manitoba, to set a date for the hearing of the charges against you. If you or your counsel do not attend at the said time and place, the Chairperson of the Discipline Committee or his designate, in accordance with *The Rules of The Law Society of Manitoba*, may proceed to set a date for the hearing in your absence.

JULY 5, 2022

LEAH KOSOKOWSKY
Chief Executive Officer
The Law Society of Manitoba

NOTE: Until further notice all attendances before the Chairperson of the Discipline Committee and Panels of the Discipline Committee will be by video conference. You will be provided with the details necessary to attend by email to the latest email address provided by you to the Society being jcarpay@jccf.ca. If your email address has changed you must contact the Administrative Assistant to the Discipline Committee by email at: lharrison@lawsociety.mb.ca or by telephone at 204-942-5571

Appendix "B"

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JAY CAMERON

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

CITATION

TO: **JAY CAMERON** of the City of Calgary, in the Province of Alberta, lawyer, and a member of The Law Society of Alberta.

TAKE NOTICE that a hearing will be held by a panel of the members of the Discipline Committee of The Law Society of Manitoba to consider charges of professional misconduct laid against you by the Complaints Investigation Committee of The Law Society of Manitoba. If you are found guilty of professional misconduct, you may be barred or suspended from practicing law in Manitoba or you may otherwise be dealt with by the

Discipline Committee panel under the provisions of *The Legal Profession Act* and the *Rules of The Law Society of Manitoba*. A statement of the charges is as follows:

As particularized in paragraphs (a) through (f) below, while and in connection with your representation of the applicants in *Gateway Bible Baptist Church et al. v Manitoba et al.* (Court of King's Bench File No. CI-20-01-29284), you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to discharge all of your responsibilities to your clients, the Court, the public, the Society and other members of the profession honourably and with integrity.

Particulars

a) On June 8, 2021, while acting as counsel for the applicants, you suggested to officials of the Justice Centre for Constitutional Freedoms, including its President, John Carpay, that covert surveillance be conducted of specific public officials in relation to the subject of the litigation and specifically recommended that the presiding judge, Chief Justice Joyal, who then had his decision under reserve, be included among those under surveillance.

b) You supported your said suggestion and recommendation by stating that the costs of such surveillance would be "a legitimate litigation expense" and that evidence so obtained could be attached to Affidavits.

c) On July 9, 2021, you informed Vince Dzeba of Chase Investigations that you had spoken to John Carpay, and that Mr. Carpay had requested that they delete all information that they had which related to their surveillance of Chief Justice Joyal. You further conveyed to Mr. Dzeba that Mr. Carpay had requested that he refrain from divulging to the police who had hired Chase Investigations to conduct the surveillance of Chief Justice Joyal.

d) Between July 9 and 12, 2021, you deleted all of the information and evidence that you had in your possession which related to Chase Investigations' surveillance of Chief Justice Joyal.

e) On July 12, 2021 when Chief Justice Joyal disclosed that he had become aware of the surveillance:

   i. you stood by without correction or comment while Mr. Carpay asserted to the court that use of the information uncovered by such surveillance would "only be after a case concluded because this has nothing to do with the litigation" and other comments to that effect when you knew that the very purpose for which you had suggested and recommended the surveillance was for use in the litigation;

   ii. you minimized your role in suggesting the surveillance by responding to a question from the Chief Justice as to whether you knew about the surveillance by saying that you "had some inkling" and that you were not privy to the instructions provided, without revealing your suggestion of June 8, 2021; and

   iii. you stood by without comment when, in open court, the Chief Justice stated that you became aware of the surveillance a couple of weeks earlier, when that was not the case.

f) In the course of the Society's investigation into the surveillance of the Chief Justice, you provided statements to the Society thereby inaccurately informing the Society in its assessment of your role in the initial idea to have such surveillance conducted, by:

   i. asserting that you were drawn into it by Mr. Carpay; and

   ii. asserting that you were not involved in the idea of whether to conduct surveillance, when the initial suggestion and recommendation to conduct such surveillance was made by you.

YOU OR YOUR COUNSEL are required to appear before the Chairperson of the Discipline Committee or her designate on **August 21, 2023 at 9:30 am,** at the offices of The Law Society of Manitoba, 200 - 260 St. Mary Avenue, Winnipeg, Manitoba, for the hearing of the charges against you. If you or your counsel do not attend at the said time and place, the Chairperson of the Discipline Committee or her designate, in accordance with *The Rules of The Law Society of Manitoba*, may proceed with the hearing in your absence.

August 16, 2023

LEAH KOSOKOWSKY
Chief Executive Officer
The Law Society of Manitoba

NOTE: Until further notice all attendances before the Chairperson of the Discipline Committee and Panels of the Discipline Committee will be by video conference. You will be provided with the details necessary to attend by email to the latest email address provided by you to the Society being jcameron@jccf.ca. If your email address has changed you must contact the Administrative Assistant to the Discipline Committee by email at: lharrison@lawsociety.mb.ca or by telephone at 204-942-5571

Appendix "C"

Relevant Statutory & Other Provisions

Federation of Law Societies of Canada – National Agreement, 2013

Definitions

1 In this agreement, unless the context indicates otherwise:

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of discipline;

(d) restrictions or limits on a lawyer's entitlement to practise;

Temporary Mobility Among Common Law Jurisdictions

11 To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:

(d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;

(e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and

(f) have no disciplinary record in any jurisdiction

Mobility permit required

14 If a lawyer *does not meet the criteria in clause 11* to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:

(a) on application;

(b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;

(c) for a total of not more than 100 days in a calendar year; and

(d) subject to any conditions and restrictions that the host governing body considers appropriate.

Enforcement

27 In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:

(a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and

(b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.

28 If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.

29 In determining the location of a hearing under clause 27, the primary considerations will be the public interest, convenience and cost.

The Legal Profession Act

Purpose

3(1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

Duties

3(2) In pursuing its purpose, the society must

(a) establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba; and

(b) regulate the practice of law in Manitoba.

Disciplinary jurisdiction

64(1) The society has disciplinary jurisdiction over

(a) members in respect of their conduct in Manitoba or in any other jurisdiction; and

(b) lawyers from foreign jurisdictions in respect of their conduct in the course of practising law in Manitoba.

Consequences of professional misconduct or conduct unbecoming

72(1) If a panel finds a member guilty of professional misconduct or conduct unbecoming a lawyer or student, it may do one or more of the following:

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty;

(k) make any other order or take any other action the panel thinks is appropriate in the circumstances.

Code of Professional Conduct

Chapter 2 – Standards of the Legal Profession

2.1 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.

Commentary

[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 … 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.

The Law Society Rules

Part 3: Authority to Practise Law

Application and interpretation

3-62(1) This division, unless otherwise stated,

(a) is intended to implement the provisions of the National Mobility Agreement; and

(b) applies to a visiting lawyer, who is a practising lawyer in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member.

Compliance with Act and rules
3-64(1) The Act, these rules and the code apply to and bind a visiting lawyer providing legal services in Manitoba or respecting the law of Manitoba.

Disciplinary Proceedings
3-70(5) The provisions of the rules and Act dealing with complaints investigation and discipline apply to a visiting lawyer providing legal services in Manitoba as though he or she was a member of the society.

Part 5: Protection of the Public
Consequences
5-96(7) When a panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student or incompetence, it may impose one or more of the consequences set out under sections 72 and 73 of the Act.