

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DANIEL WILLIAM CHORNOPYSKI

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION

Hearing Date: March 5, 2024 at 9:30am

Panel: Victor P. Bellay – Chair
Mark Toews
Sandra Oakley (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
Daniel William Chornopyski, Self Represented

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REASONS FOR DECISION

INTRODUCTION

1. Daniel William Chornopyski (“the member”) is charged in a Citation dated January 11, 2024 with two counts of professional misconduct by failing to respond promptly and completely to the substance of inquiries contained in correspondence and communications from the Law Society of Manitoba, contrary to Sub-Rules 5-64(3) and (4) of the *Rules of the Law Society of Manitoba* and Rule 7.1-1 of the *Code of Professional Conduct*.

2. On March 5, 2024, a Discipline Hearing Panel (“the Panel”) conducted a hearing in this matter. The member and counsel representing the Law Society of Manitoba (“the Society”) submitted a Statement of Agreed Facts. The member entered a guilty plea to both charges.
3. The jurisdiction and composition of the Panel, the valid service of the Citation on the member, and his Membership in the Society and in no other governing body of the legal profession in any other jurisdiction, were all admitted.
4. The parties made a Joint Submission that the Panel find that the member’s conduct as set out in the Statement of Agreed Facts constitutes professional misconduct and order that the member be reprimanded and pay \$1,500.00 to the Society as a contribution to the costs of the investigation and prosecution of the charges.
5. At the conclusion of the hearing, the Panel advised the parties that it accepted and endorsed the Joint Submission as to sanction and would provide written reasons to follow.

These are the Panel's reasons.

FACTS

6. The evidence was presented in the Statement of Agreed Facts that was marked as an Exhibit in this hearing. The circumstances in relation to each count on the Citation are set out below.

Circumstances Relating to Count 1

7. On June 23, 2023, the Complaints Resolution Department of the Society received a complaint from a client of the member with regard to an estate litigation matter. The complaint was sent to the member on July 11, 2023, with a letter requesting his

response to the concerns raised within 14 days, as well as confirmation that he had reported the matter to his insurer.

8. The member did not respond to that letter. On August 8, 2023, a second request for response was sent to the member, along with a caution that a failure to respond may be referred to the Chief Executive Officer for consideration of charges. On August 22, 2023, the member provided a response. He did not confirm whether he had reported the matter to the insurer.
9. On September 26, 2023, counsel for the Society wrote to the member again and requested further response from him. The member did not respond. Counsel wrote to the member on October 27, 2023, requesting a response and again cautioning that a failure to respond may lead to charges of professional misconduct. On November 10, 2023, the member responded to the Society.
10. On November 15, 2023, counsel for the Society wrote to the member and requested production of his original client file as well as a response to certain concerns, and confirmation that the matter had been reported to the insurer. The member did not respond.
11. On December 1, 2023, further correspondence was sent to the member again requesting his response and cautioning against failing to do so. The member did not respond.
12. After being charged with professional misconduct for failing to respond to the Society, the member provided his response.

Circumstances Relating to Count 2

13. The Society received a complaint from a former client of the member on September 12, 2023. Counsel for the Society sent an email to the member on September 14,

2023, informing him of the complaint and inquiring about the status of his client's outstanding request for his client file. The member did not respond to that email.

14. Counsel for the Society called the member on September 19, 2023, and spoke to him directly. Among other things, he confirmed that he would respond to his client's email to him of September 12, 2023 and provide an update, but he did not do so. The Society sent another email to the member on October 2, 2023 requesting an update on the matter. The member did not reply.
15. On October 4, 2023, counsel for the Society sent the member a letter requesting his written response to the concerns raised in the complaint within 14 days. The member did not acknowledge receipt or respond.
16. On October 24, 2023, counsel for the Society wrote again to the member, demanding that he provide a response by November 7, 2023 or his matter would be referred for consideration of charges. The member's Designated Representative was copied on the correspondence and did reply to the Society, but the member did not.
17. After exchanging emails with the member's Designated Representative about the matter, counsel for the Society reiterated in an email to both the member and the Designated Representative that they required the member's response to the complaint by November 7, 2023. The member did not provide his response by the deadline.
18. On November 13, 2023, counsel for the Society made a further attempt to follow up with the member by email; he did not reply. On November 16, 2023, the Society again emailed both the member and the Designated Representative and despite the efforts of the Designated Representative to assist, the member did not provide his response to the Society.

19. After being charged with professional misconduct for failing to respond to the Society, the member provided his response.

Relevant Statutory Provisions

20. *The Legal Profession Act*
Sections 3(1), 3(2)(b), 71(1)(e), 72(1)(f)

Code of Professional Conduct
Section 7.1-1

Law Society Rules
Rules 5-64(2), 5-64(3), 5-64(4), 5-64(5), 5-66(e)

Relevant Authorities and Principles

Joint Submissions

21. In considering the joint submission of the parties, the Panel is mindful of the principle enunciated in *Anthony-Cook v Her Majesty The Queen*, 2016 SCC 43 dealing with circumstances in which a tribunal such as this one can depart from a joint recommendation as to sanction.
22. In *Anthony-Cook*, the applicable test is noted to be the public interest test, which is that a trial judge 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.
23. This test was followed in Manitoba in the decision of *The Law Society of Manitoba v Champagne*, 2018 MBL 4. Paragraph 8 of that decision provides as follows:

Joint submissions as to penalty serve a very important role to the justice system at large, including in law society proceedings. Certainty as to result provides an efficient and cost effective process to resolve disciplinary complaints against lawyers and protect the public. Skilled lawyers, bringing their common wisdom to the task, are well suited to find a just and appropriate resolution. As such, discipline panels should only depart from a joint submission in the rare circumstances where the proposal would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

Purposes of Professional Discipline

24. In *The Law Society of Manitoba v Fawcett*, 2023 MBL 2 at para. 21, the panel in that case described guiding principles relating to the purposes of professional discipline that I find to be applicable to this proceeding, and which I set out below:

- a) The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

The Law Society of Manitoba v Nadeau, 2013 MBL 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. Other relevant considerations (derived from the list of so-called "Ogilvie"

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 victims; (e) the advantage gained or to be gained, by the respondent; (f) the number of times the offending conduct occurred; (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 possibility of remediating or rehabilitating the respondent; (i) the impact on the respondent of criminal or other sanctions or penalties; (j) the impact of the proposed penalty on the 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.”

The Law Society of Manitoba v Sullivan, 2018 MBLS 9, citing *Nadeau and Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012

- c) Integrity is the foundation of the legal profession. It is first rule in the Code of Professional Conduct and every other rule is based upon it. ... Without this level of trust, the profession cannot function.

The Law Society of Manitoba v McKinnon, 2010 MBLS 5

25. Section 3(1) of *The Legal Profession Act* provides that the purpose of the Society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence. In *The Law Society v Prober*, 2022 MBLS 12, the panel in that case stated that “discipline decisions are not meant to be punitive. Rather, they must balance the personal mitigating factors pertinent to the member with the foregoing mandate of the Society to protect the public interest.”

Submissions on Behalf of the Society

26. Ms Klein on behalf of the Society submitted that the proposed joint submission was fit and appropriate having regard to the need to balance the principle of protection of the public interest with leniency to the member.
27. She submitted that strict compliance with Society rules is essential and the Society relies on and requires full and frank cooperation from its members.
28. In this matter, Ms Klein noted that while issues related to governability are serious matters, the nature of the misconduct displayed here was less serious as far as the spectrum of professional discipline matters is concerned. There was no client prejudice and no allegation that the member was dishonest.
29. Counsel for the Society submitted that since the incidents set out in the Citation, the member has fulfilled all outstanding requests from the Society and investigators are satisfied with the subsequent compliance of the member.
30. While noting that a reprimand is the least serious penalty that can be imposed for professional misconduct, Ms Klein argued that this penalty was nonetheless significant. She submitted that members of the Society are expected to practise without misconduct, and the noting of a reprimand on a member's discipline record has implications to the manner in which any future findings of misconduct would be treated.
31. Ms Klein submitted that the Panel should consider the member's guilty plea to be mitigating.
32. In relation to the proposed order for costs, Ms Klein argued that the proposed contribution to costs satisfies the principle that lawyers who commit professional

misconduct ought to bear the burden of covering costs associated with investigating and prosecuting the conduct.

Submissions by the Member

33. Mr. Chornopyski confirmed that he agreed with the facts as set out in the Statement of Agreed Facts. He advised that he did not want a hearing to determine if he committed professional misconduct.
34. He submitted that the purpose of professional discipline was to protect the public but that in this case, he didn't see where the public was harmed. The member stated that the complainant was the Society, and that there was no allegation of any other misconduct such as misappropriation.
35. The member believed that these circumstances arose because of issues that he faced in dealing with correspondence. He advised the Panel that he worked as a sole practitioner and now is part of a two lawyer office, with a practice area that focuses on litigation. When he commenced his practice, the member tried to have all of his communication flow through the email that he accessed through his smartphone, and said that this approach became crushing over time. The member recognized that he needed to take a new approach in responding to communications that were sent to him.
36. He advised the Panel that he has taken steps within his practice to prevent a repeat of this conduct. Since these circumstances arose, his full time assistant has access to all of his emails and is the primary contact for correspondence directed to him. His assistant prioritizes the communication for him. In addition, the other lawyer practising in his office has full access to his email. The member states that he is reserving blocks of time during the week to reply to correspondence.

37. The member expressed concern about the impact that a reprimand for professional misconduct would have on his reputation in the profession. He submitted that the effect of discipline would have a huge impact on him, and he feared that the effect of these proceedings would impact where he could go with his career.

ANALYSIS

38. In assessing the suitability of the Joint Submission, the Panel considered numerous of the Ogilvie factors:

- a) the nature and gravity of the conduct proven

The Panel recognizes that these offences did not involve dishonesty or prejudice to the member's clients. They did not cast doubt upon his ability or competence to practise law. To that extent, the Panel agrees with the submission of counsel for the Society that these offences fall on the less serious part of the spectrum when considering instances of professional misconduct.

Nonetheless, the Panel wishes to make it clear to the member that a repeated failure to respond on a timely basis to reasonable and lawful demands for information from the Society will be treated seriously. The obligation of members to reply to correspondence requiring cooperation from members is clear. The failure to comply with these demands in a timely way has a significant impact on the Society's ability to enforce its mandate of protecting the public interest in the delivery of legal services.

- b) the age and experience of the member

The member had been practising for seven years at the time of these offences, and had been practising as a principal in a small firm for four years. It is clear from the information that the member provided that he was inexperienced with the

administrative demands of such a practice relating to the timely handling of correspondence.

c) the previous character of the member, including details of prior disciplines

The member has no prior discipline history.

f) the number of times the offending occurred

The incidents occurred in relation to two separate investigations over the course of approximately five months.

g) whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

h) the possibility of remediating or rehabilitating the member

These two factors may be dealt with concurrently. The member has acknowledged his misconduct and entered a guilty plea to these offences. He advised that he had no desire to contest the matter, and as counsel for the Society submits, he spared the Society from the costs of a contested hearing. Since the charges have been laid, the member has fulfilled all outstanding requests from the Society's investigators. The member has also implemented a process in his practice that will improve his response to important correspondence.

j) the impact of the proposed penalty on the member

A reprimand is a significant disposition for a conviction for professional misconduct. The member is aware of the implications that a discipline history may have on his career. Discipline sanctions tend to be progressive, so the opportunity for leniency

in relation to any future misconduct by the member will be impacted by this disposition.

k) the need for specific and general deterrence

It is important that this member specifically and members of the profession generally understand that timely responses to requests for information from the Society are required. Offences that prevent the Society from fulfilling its mandate to protect the public interest in the delivery of legal services are offences that could harm the public. Effective regulation requires that members of the profession believe that a failure to comply will invariably lead to significant consequences. A sanction for the breach of this obligation sends the appropriate message to the sanctioned member and to the members of the profession.

l) the need to ensure the confidence of the public in the integrity of the profession.

When a lawyer fails to comply with the rules relating to the provision of timely written responses to complaints filed by a member of the public, the Society must act to ensure that it is fulfilling its mandate. In this way it maintains the public reputation of the profession.

m) the range of penalties imposed in similar circumstances

Counsel cited several authorities for the Panel to consider:

The Law Society of Manitoba v Wang, 2015 MBLS 12

The Law Society of Manitoba v Mayer, 2020 MBLS 11

The Law Society of Manitoba v Fiorino, 2022 MBLS 3

The Law Society of Manitoba v MacKinnon, 2010 MBLS 5

The authorities show that a reprimand falls within the range of sanctions imposed for offences similar in nature to the ones committed by the member.

39. Taking all of these factors into account, the Panel is satisfied that the proposed sanctions are appropriate and will accept the Joint Submission.

DISPOSITION

40. In accordance with the Joint Submission, the Panel finds that the conduct of the member set out in the Statement of Agreed Facts constitutes professional misconduct as alleged and particularized in the Citation and orders that:
- a) Mr. Chornopyski be reprimanded for the professional misconduct; and
 - b) Mr. Chornopyski pay \$1,500.00 to the Society as a contribution to the costs of the investigation and prosecution of the charges.

The Panel thanks Mr. Chornopyski and counsel for the Society for their submissions in this matter.

Dated this 10th day of April, 2024.



Victor P. Bellay, Chair



Mark Toews



Sandra Oakley