

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**JASON ASHLEY GOLDBERG**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**REASONS FOR DECISION**

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**REASONS FOR DECISION**

1. This matter was heard in the offices of The Law Society of Manitoba (the “Society”), 200 – 260 St. Mary Avenue, Winnipeg, Manitoba on Tuesday, June 14, 2022 commencing at 9:30 a.m. The hearing was a “virtual” hearing, the panel members and parties attending from remote locations.
2. The panel consisted of Douglas Bedford, Chairperson and Mr. Donald Knight, Q.C., both members of the Society, and Ms. Carmen Nedohin, a public representative appointed by the Society.
3. The Society was represented by Mr. Rocky Kravetsky.
4. The member, Mr. Jason Goldberg, was present and was represented by Mr. William Haight.
5. An Agreed Statement of Facts, including an Amended Citation, was signed by the parties shortly before the hearing commenced and was filed as Exhibit No. 1.
6. The foregoing Agreed Statement of Facts was tendered and accepted pursuant to section 6(2) of *The Manitoba Evidence Act*, C.C.S.M., c. E150 in response to the objection of Mr. Goldberg’s counsel. The panel observes that this Agreed Statement of Facts shall not be used or be receivable in evidence in any other legal proceeding against

Mr. Goldberg as is stipulated in section 6(2) of the foregoing Act. The panel was advised that Mr. Goldberg's former client, Mr. M.O., has commenced two lawsuits against him arising out of the facts summarized in the Agreed Statement of Facts and, hence, the objection to the filing of that document and the direction by the Panel pursuant to section 6(2) that Mr. Goldberg be compelled to answer the Amended Citation through the filing of the Agreed Statement of Facts.

7. The events that led to this hearing occurred some six years ago. Until then, Mr. Goldberg had an unblemished record. In the autumn of 2015, during the course of representing Mr. M.O., Mr. Goldberg directly ignored his client's instructions with respect to the dispatch of an email to his client's sibling, lent money to his client without any advice to his client to obtain independent legal advice and, following the termination of his retainer, engaged in a series of outrageous communications, mostly text messages and emails, periodically over some ten months with his former client and the client's family and treating physician. Counsel for the Society described the communications as "horrible". Mr. Goldberg's counsel described this conduct as "completely out of character" for his client and in explanation of it the parties submitted and relied upon two lengthy psychiatric reports from doctors consulted by Mr. Goldberg subsequent to 2015/2016. The Panel had no difficulty accepting Mr. Goldberg's admission that his conduct constituted professional misconduct. And, after hearing from the Parties, the Panel accepted their recommendation that Mr. Goldberg be ordered to pay a significant fine, \$12,500.00, and costs of \$10,000.00 and that as a condition of continuing to practice he be obliged to continue with medical treatment and provide the Society with such information from his treating psychiatrist as may reasonably be requested. The Panel concluded that the joint recommendation, for the reasons set out hereafter, was appropriate in the circumstances, which are somewhat unique, and reflects due consideration for the protection of the public interest.

#### Relevant Facts

8. Mr. Goldberg and Mr. M.O. had known each other since childhood. Indeed, Mr. Goldberg was a close acquaintance of a brother of Mr. M.O. and that brother, Mr. M.O. and Mr. Goldberg all attended the same university in Ontario at the same time in the mid-1990s where they socialized frequently.

9. Mr. Goldberg was called to the bar in Manitoba in 1998 and has earned a good reputation over the years in the fields of tax law and commercial transactions. Since 2004 he has been an associate and, subsequently, a partner at a large law firm in Winnipeg.

10. Mr. M.O. also has a law degree from a Canadian university and has been a member of the bars of California and New York State. At the time of Mr. Goldberg's retainer, Mr. M.O. was not working and was in difficult financial circumstances and living in Ontario. He was for a time behind in his rent and unable to pay storage fees for a locker containing personal possessions in California.

11. Mr. Goldberg has been challenged throughout his life with a physical ailment and mental health issues, including diagnoses of [REDACTED]. He has had difficult experiences within his family, particularly his relationship with his father, and those it seems contributed to his insecurities, fears and [REDACTED]. As noted above, the panel was provided with two very extensive medical reports that set out in great detail the respective doctors' summaries of Mr. Goldberg's relevant history and their conclusions as to his mental health challenges and prognosis. While the medical reports are critical in understanding Mr. Goldberg's actions commencing in November 2015 through September 2016 as alleged and admitted in the Amended Citation, we do not believe it necessary to set out here additional details of those challenges. We accept that Mr. Goldberg was suffering from mental health issues and find persuasive the opinions of the doctors that the particular history Mr. Goldberg had with Mr. M.O. likely explains his completely unprofessional treatment of Mr. M.O., behaviour that would not probably have unfolded with any other client under an otherwise similar retainer.

12. Mr. M.O. consulted Mr. Goldberg in the summer of 2015 regarding a family trust. The initial conversations took place under the umbrella of old friends having a drink and were informal. Mr. M.O. and his three siblings, a sister and two brothers, were residual beneficiaries of a trust. Mr. M.O. was interested in learning whether the trust could be wound up and his and his siblings' interests be paid out in the near future. Mr. Goldberg determined that with consents from all interested parties, that could be done. In due course he was retained by Mr. M.O. and he drafted documents to implement an immediate distribution of trust assets and circulated them to interested parties.

13. In September 2015, Mr. Goldberg lent Mr. M.O. the sum of \$2,300.00 in the expectation that the trust would be liquidated shortly and Mr. M.O. would repay him out of his share of the trust. Mr. Goldberg did not suggest to Mr. M.O. that he should obtain independent legal advice regarding the loan and none was provided. Mr. Goldberg now had a personal interest in the windup of the trust.

14. In November 2015, Mr. Goldberg authorized Mr. M.O. to charge Mr. Goldberg's credit card with two rental payments, each in the amount of \$527.80, for Mr. M.O.'s apartment which charges were made. Mr. Goldberg also discussed lending a further sum of some \$21,000.00 to Mr. M.O. on terms. Again, no independent legal advice was recommended and no consent in writing obtained from Mr. M.O. The second loan was not made. With respect, at least, to the two rental payments, Mr. Goldberg anticipated at the time he authorized his credit card to be used that the revisions to the trust would proceed and he would shortly be repaid from his client's share of distributions.

15. Mr. M.O.'s sister was not willing to consent to a revision of the trust. It seems that over the years Mr. M.O. had become estranged from her and they were not on good terms. Mr. Goldberg, with a view to securing the sister's consent, drafted, in Mr. M.O.'s name, an apologetic email to be sent by him to his sister. Mr. M.O. told Mr. Goldberg he wanted no part of sending the email in question and that it was not to be sent. The same

day, November 19, 2015, Mr. Goldberg, notwithstanding the foregoing instructions, sent the email to the sister with advice that it reflected Mr. M.O.'s views but that the latter was ill and could not send it himself.

16. Upon learning, almost immediately, what Mr. Goldberg had done, Mr. M.O. terminated the retainer and angrily accused Mr. Goldberg of unethical behaviour and threatened to report him to the Society and to sue him.

17. In reaction to his now former friend and client's accusations, Mr. Goldberg launched a series of vile text messages and emails which he frequently copied to members of Mr. M.O.'s family. The initial flurry of exchanges took place from November 19, 2015 to at least December 1, 2015. These were followed by similar abusive and offensive communications in February, March and September 2016. Mr. Goldberg communicated with his credit card issuer and his former client's landlord alleging, falsely, that his former client had fraudulently charged his credit card for rent and he recovered the rental payments. He threatened to embarrass his former client by disclosing confidential information about him to third parties. He asserted in communications to his former client's family and treating physician that his former client was mentally ill and in need of care. He sought to involve his former client's father in proposals to recover the money he had lent his former client. Mr. Goldberg sent dozens of completely unprofessional emails to his client and third parties, primarily his former client's parents, that to any reader reflect anger, rage and a complete lack of self-control. For example, on March 16, 2016, the father of his former client asked Mr. Goldberg to cease sending or including his wife, Mr. M.O.'s mother, and himself in any further communications. After that email was sent, Mr. Goldberg included them in six further communications the same day. Counsel for the Society accurately described Mr. Goldberg's communications as "horrible". They were not the product of a single moment of anger or disappointment in the termination of a retainer and a friendship, but rather a sustained period of harassment.

18. Mr. Goldberg's counsel submitted that from his client's perspective his relationship with Mr. M.O. was throughout overshadowed by their previous history as friends. He handled the relationship as a "friend", not as a lawyer and when his advice was soundly rejected and he was accused of unethical conduct and his reputation and career were threatened and then he was sued, he viewed Mr. M.O.'s actions as a "betrayal" of their friendship. The doctors suggest that as a consequence of some of his mental health issues, Mr. Goldberg is prone to "moral rigidity" and consequently overreacted to his former client's accusations that the help he extended to him was unethical and wrong and, similarly, overreacted to his refusal to repay the money that was lent in the expectation of prompt repayment.

19. Counsel for the Society observed that Mr. M.O. was a "client" and the relationship must be viewed as a "lawyer/client" relationship. Mr. M.O. was quite rightly upset that his express instructions were ignored by his lawyer and as an aggrieved client he was entitled to complain to the Society.

20. We were advised by his counsel that Mr. Goldberg is ashamed of his conduct and we can be assured that he will never again behave the way he did. Both counsel were in agreement that Mr. Goldberg's conduct can only be understood through a review of his medical history and the extensive reports which were filed. In the case of his treating psychiatrist, the report was completed following 23 visits with Mr. Goldberg.

21. The proposal to wind up the trust has not proceeded.

#### The Member's Record

22. Mr. Goldberg was called to the bar in Manitoba in 1998. He has practiced continuously since then in the fields of tax and commercial law. He has no previous record.

#### Analysis

21. Mr. Goldberg is not the only lawyer practicing who struggles with physical and mental health challenges. Nor, certainly, is he unique in being faced with a client who rejects his advice, however well-intentioned Mr. Goldberg believed it was, and alleges misconduct and proceeds to complain to the Society and to sue. As counsel for the Society submitted, the relationship between Mr. Goldberg and Mr. M.O. was a lawyer/client relationship, regardless of their pre-existing history and the onus, accordingly, was on Mr. Goldberg to maintain throughout that relationship a civil and professional demeanor. He most clearly did not do that and his repeated violations of his obligation to treat his client professionally require a meaningful sanction, notwithstanding his physical and mental challenges.

22. While it seems there is no precedent that fits precisely what occurred between Mr. Goldberg and Mr. M.O., there are some parallels in previous cases that assist one in determining an appropriate sanction. Lawyers have in the past acted contrary to their client's instructions. In *The Law Society of Manitoba v. Sullivan*, 2018 MBLS 9, Mr. Sullivan was fined \$10,000.00 for acting without instructions in a real estate transaction in which he recommended his clients take advantage of an error in the transfer of adjoining parcels of land. In *The Law Society of Manitoba v. Lee*, 2021 MBLS 4, Mr. Lee was fined \$7,500.00 for filing a Notice with the Companies Office indicating that a particular individual continued to be a director even though he had no instructions to do that and it was contrary to the position of the group of companies whose affairs were at issue and were his client. Mr. Lee had no previous record and had been practicing for 26 years. In *The Law Society of Manitoba v. Anhang*, 2002 MBLS 1, Mr. Anhang was fined \$5,000.00 for including as plaintiffs in a Claim individuals who had not instructed him to sue. He had no previous record.

23. In *Law Society of British Columbia v. Lanning*, 2009 LSBC 02, a lawyer was reprimanded for sending 12 "intemperate" and uncivil letters over a period of five months to an unrepresented litigant. The litigant in question was not deterred by the letters. In

*The Law Society of Manitoba v. Mayer*, 2020 MBLS 9, Mr. Mayer was fined \$5,000.00 for, among other things, sending correspondence to a judge that was “inconsistent with the proper tone of a professional communication from a lawyer.” In *Law Society of Ontario v. Robson*, 2018 ONLSTH 84, a lawyer was suspended for three months for sending uncivil and abusive communications to Law Society staff. In this case, there was evidence that the lawyer suffered from mental illness and he had a previous record. Finally, in *The Law Society of Manitoba v. Histed*, unreported, February 12, 2020 (aff’d 2021 MBCA 79), Mr. Histed was suspended for six months for a series of communications in which he alleged that a Crown attorney was responsible for the suicide of his client’s former partner. Mr. Histed’s client was accused of assaulting his former partner. Mr. Histed had a previous record.

24. There are a number of cases wherein lawyers have been charged for acting in a conflict of interest and the penalties range widely. Here, the amounts Mr. Goldberg lent were relatively small and no interest was to be paid. The circumstances suggest that Mr. Goldberg was initially motivated to assist a friend in need, though that does not make the conflict that he thus created for himself excusable and the facts that Mr. M.O. was a friend, was in need and the amounts lent were relatively small do not obviate the essential requirements that the client be told he should secure independent legal advice and consent in writing.

25. The proposed fine of \$12,500.00 is significant. It exceeds the fines handed out in the *Sullivan, Lee* and *Anhang* cases for ‘single’ instances of failures to act in compliance with instructions but this is appropriate given that Mr. Goldberg compounded his transgression by sending dozens of vile, totally unprofessional communications to his former client and to third parties in which he vilified his former client, suggested he was mentally unfit and had engaged in fraud. This correspondence and its content warranted more than the reprimand handed out in the *Lanning* case but properly something less than the suspensions given Mr. Robson and Mr. Histed, each of whom had previous records. And, although not the most serious case of conflict of interest, the fine also takes into account Mr. Goldberg’s ill-considered loans to his client.

26. Mr. Goldberg advised the sister, within an hour, that he ought not to have sent her the email in question and apologized to her. Additional mitigating factors in this case include:

- Mr. Goldberg’s admission, now, of his responsibility for unprofessional conduct which has avoided a contested hearing;
- his unblemished record for 17 years; and
- the fact that for six years now he has practiced without further incident.

27. Counsel for the Society acknowledged that Mr. Goldberg’s actions were an “anomaly” and not likely to ever be repeated. Mr. Goldberg’s commitment to ongoing medical treatment is commendable and including that as a condition to his practice, coupled with the obligation to provide the Society with such medical information regarding his treatments as may reasonably be requested persuades us that there is no

serious risk that any other member of the public will be subjected to the treatment that Mr. M.O. experienced as Mr. Goldberg's client. We were reminded by counsel that joint recommendations ought to be accepted by panels of the Discipline Committee unless the members of the panel find that the recommendations would bring the administration of justice into disrepute or are otherwise contrary to the public interest. This recommendation reflects well the proper administration of justice and for the reasons set out above does not jeopardize the public interest or otherwise conflict with it.

### Conclusion

28. Accordingly, for the foregoing reasons we conclude that Mr. Goldberg be fined \$12,500.00 and he is ordered to pay a contribution in the amount of \$10,000.00 to the costs of the investigation and prosecution of this matter, the timing of which payments is to be as the Chief Executive Officer of the Society determines. Further, Mr. Goldberg is to continue with treatment as prescribed by his current doctor or such other psychiatrist or psychologist as is acceptable to the Society, and he is to provide the Society with such information from his treating psychiatrist or psychologist as the Society may reasonably request.

These written reasons signed the 27<sup>th</sup> day of September, 2022.



Douglas A. Bedford, Chairperson



Donald Knight, Q.C., Panel Member



Carmen Nedohin, Panel Member