THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DAVID MATAS

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: April 11, 2024

Panel: James E. McLandress, K.C. (Chair)
James Shaw
Keely Richmond (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
J. Richard Wolson, K.C. for the Member

REASONS FOR DECISION

INTRODUCTION

1. This matter came before the Panel by way of a guilty plea with respect to the Member's failure to comply with an Undertaking to the Law Society and a joint recommendation as to consequence.

2. Mr. Matas has been a Member of the Law Society of Manitoba since 1971. His career and his professional contributions to Manitoba, to Canada, and to the international community are well documented and have been nothing if not exemplary. That he has found himself for the first time before a Disciplinary Panel of the Law Society so late in that career is indeed unfortunate.

3. At the conclusion of the hearing the Panel indicated it accepted the joint recommendation with written reasons to follow. These are our reasons.

JURISDICTIONAL MATTERS

4. The Panel is satisfied it has jurisdiction over the Member and the proceeding. Mr. Matas' membership in the Law Society is admitted as is service of the Citation dated October 26, 2023, and setting out the alleged misconduct (the "**Citation**"). Mr. Matas is not a member of any other Canadian Law Society and had no objection to any of the Panel members based on bias, conflict, or otherwise. Through Counsel, Mr. Matas waived the reading of the Citation.

PRELIMINARY MATTERS

5. There were no preliminary matters to address.

ISSUE

6. The only issue for the Panel to decide is the fitness of the joint recommendation.

THE EVIDENCE

7. The evidence before the Panel was presented by way of a Statement of Agreed Facts, marked as **Exhibit 1** in the proceedings, and the submissions of Counsel. The Citation formed part of Exhibit 1.

THE MEMBER

8. David Matas has practised law for some 53 years. His practice currently consists of approximately 20% immigration work and 80% international human rights.

9. He has no discipline record.

10. Mr. Matas' career has unquestionably been a distinguished one. As outlined by Mr. Wolson, over his career Mr. Matas has:

a. Published 13 books in the area of human rights.

b. Written numerous articles on human rights and other matters of social importance.

c. Lectured on human rights, immigration and related issues at the Law Schools in Manitoba and Montreal.

d. Was a Canadian delegate to the United Nations in several capacities.

e. Represented Manitoba on a federal committee dealing with certain aspects of the Canadian Charter of Rights & Freedoms.

f. Investigated and reported on the forced harvesting of human organs in China and the circumstances of Tamil refugees in Sri Lanka.

g. Visited over 75 countries to speak on and address human rights issues.

11. Significantly, as Mr. Wolson advised, Mr. Matas has done this largely without charging fees. He truly has given of himself as a lawyer, as a person, and as a citizen of the international community.

THE FACTS

12. On February 10, 2022, Mr. Matas gave an undertaking to the Society (the "**Undertaking**"). Pursuant to the Undertaking, Mr. Matas agreed to restrict his practice to acting as Counsel to other lawyers (described in the Undertaking as a "responsible lawyer"). Among other things, Mr. Matas undertook not to accept retainers from any person, and not to appear in Court or provide legal services directly to clients without a responsible lawyer being present. The Undertaking also required he advise his (former) clients they need to obtain alternate Counsel and transfer their files to such Counsel within certain timeframes.

13. Mr. Matas did not live up to that Undertaking in several respects with respect to seven individual clients:

a. He accepted three separate retainers from one of the clients.

b. He appeared in Federal Court for three of the clients without the responsible lawyers being present.

c. He provided legal advice to four of the clients without the responsible lawyer being present.

d. He communicated with the Federal Department of Justice on behalf of three of the clients without first having the responsible lawyer review the communications.

e. He failed to transfer the files of six of the seven clients to the responsible lawyer within the promised time frames.

14. We were advised that pursuant to the Undertaking, Mr. Matas worked with seven different lawyers to take on the role of "responsible lawyer" and assume conduct of Mr. Matas' files.

15. Significantly, *all* the charges in this case relate to Mr. Matas' dealings with only *one* of those seven lawyers.

16. The evidence before us is that the lawyer in question – a former articling student of his – appeared to feel they were Counsel "in name only", that they asked Mr. Matas to collect some of their fees for them and, on at least one occasion, left Mr. Matas to appear in Court on his own. Nonetheless, while these facts are mitigating, they do not – and Mr. Wolson emphasized this fact – excuse his failure to discharge his obligations in the Undertaking.

17. The Society confirmed no clients were prejudiced in any way by Mr. Matas' actions and that he gained no personal advantage. On the contrary, the Society confirmed Mr. Matas was "doing what he felt he had to do" to serve the clients' interests.

ANALYSIS

18. The Parties submitted a joint Book of Authorities which the Panel has reviewed. Certain of the cases are well known and frequently cited in discipline sentencing hearings, notably both *Nadeau*, 2013 MBLS 4 (***Nadeau***) and *Sullivan*, 2018 MBLS 9 (***Sullivan***) as well as *Law Society of British Columbia v. Ogilvie*, [1999] L.S.D.D. No. 45, [1999] LSBC 17 (***Ogilvie***).

19. It is well recognized in the literature and the case law that *"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."*[1]

20. Many cases and authorities offer lists of the factors a sentencing Panel could or should take into consideration when determining the appropriate consequence for a lawyer's misconduct. *Nadeau* rightly points out that no one list should be preferred for a particular case. Rather a Panel must exercise its discretion to choose which factors to consider and what weight to give them.

21. Because both parties spoke to the *Ogilvie* factors and because we view those considerations as appropriate for this case, we will consider those factors.

22. First, however, a note on the law relating to joint recommendations, reprimands, and costs.

23. *Sullivan* is the leading Manitoba authority on **joint recommendations**. In *Sullivan*, the Panel adopted the reasoning of Justice Moldaver in the Supreme Court of Canada's decision in *Anthony-Cook v. Her Majesty the Queen*.[2] From those authorities we draw the following principles:

    a. Joint submissions as to consequence in disciplinary proceedings are not sacrosanct; a Panel always has the discretion to reject the

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[1] *In Lawyers & Ethics: Professional Responsibility and Discipline,* Gavin MacKenzie, Carswell 2012, Release 3.
[2] 2016 SCC 43.

recommendation put forward by Counsel. However, to do so a Panel must pass "a very high bar".

b. Joint submissions greatly benefit the effective governance of the profession. They benefit the member, the Society, victims, witnesses, the profession, and the administration of the disciplinary process generally. By their very nature there is an element of *quid pro quo* in a joint submission in which all participants benefit.

   i. The recommendation is likely to be more lenient than the member might expect after a hearing and of course the stress and expense of a contested hearing is avoided. Of particular importance in the legal profession, a guilty plea – particularly an early one – offers an opportunity for the member to begin making amends.

   ii. From the Society's perspective, joint recommendations ensure a finding of guilt on the charges and avoid the expense, delay, and uncertainty of a hearing.

   iii. The guilty plea spares former clients and other witnesses the stress, unpleasantness, and time of having to testify; a process that would almost certainly only worsen their attitude toward the profession generally. The plea will also hopefully bring some measure of closure to victims with the knowledge the member has accepted accountability for their actions.

   iv. For the profession, they foster the efficient and effective administration of disciplinary justice, reinforcing the view of a profession properly self-governed in the public interest.

c. For all these reasons it is critical there be a high degree of certainty that a joint submission will be accepted.

d. A Panel should not depart from a joint submission on consequence unless the proposed disposition would bring the profession's disciplinary process into disrepute or would otherwise be contrary to the public interest.

e. 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 and the role of the Society that they would view it as a break down in the proper functioning of the professional discipline process.

f. To reject a joint submission – particularly one crafted by experienced Counsel for both parties – means the submission would (to quote Justice Moldaver) have to be "*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 functioning of the justice system had broken down.*"

24. For lawyers **reprimands** are not "a slap on the wrist". As recognized by the authorities discussed by Counsel,[3]

a. *"A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure."* [*LSA v. King*]

b. *"A reprimand is not minor. It is a public statement by the governing body of the profession that the lawyer has been unethical and has brought [themselves] and the profession into disrepute. However, it also reflects the Panel's collective belief that the behaviour will not be repeated and that the public will be served competently and honourably in the future."* [*Badmus*]

25. Finally, as regards **costs**, s. 72(1)(e) of *The Legal Profession Act* gives a Panel the power to order a member found guilty of professional misconduct "*to pay all or any part of the costs incurred by the Society in*

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[3] *Badmus* 2021 MBLS 5, *Alghoul* 2016 MBLS 17, *Law Society of Alberta v King* 2010 ABLS 9, and *Law Society of Manitoba v King,* 2011 MBLS 5.

connection with any investigation or proceedings related to the matter in respect of which the member was found guilty." Rule 5-96(8) sets out a non-exhaustive list of specific items a Panel can consider when establishing an amount of costs to be awarded.

26. The Panel in *Law Society of Manitoba v Mackinnon*[4] commented, "*The rule permitting costs reflects the view of the Benchers that lawyers who cause the problems ought to be bear the burden of covering the costs associated with investigating and prosecuting the conduct.*" To be clear, *MacKinnon* should not be read to imply those lawyers should bear the *full* cost of those proceedings. Rather, we accept the Society is free to recommend, and a Panel has the discretion to order, something less than the full cost of the proceedings.

27. Applying the relevant factors to this case (primarily from *Ogilvie*) the Panel finds:

    a. The nature and gravity of the conduct proven – Breaches of undertakings are inherently serious. They are one of the Society's most important tools in governing the profession. Lawyers *must* be expected to keep their promises and the breach of a written undertaking to the Society goes directly to issues of governability. That said, in *this* case the circumstances of the breach put it at the low end of the scale for this sort of misconduct. It was not, as is often the case, accompanied by a separate act of misconduct. As Ms Klein pointed out, the Society is *not* saying *Mr. Matas* is ungovernable. Among other things, the fact he was able to work successfully within the constraints of Undertaking with the other six of the responsible lawyers suggests quite the opposite.

    b. Age and experience of the Member – Mr. Matas is now 80 years old. As noted, he has been practising law for over 50 years.

    c. Previous character of the Member, including details of prior disciplines – He has no prior discipline, and his character is otherwise unimpeachable. Few among us could aspire to have

[4] 2010 MBLS 5

accomplished what Mr. Matas has. Mr. Wolson rightly characterizes him as an icon in the profession.

d. Impact upon the victim – As Ms Klein indicated, a breach of undertaking is not victimless. A breached undertaking puts at risk the public's perception of the profession's ability to govern itself.

e. Advantage gained or to be gained, by the Member – There was none.

f. Whether the Member has acknowledged the misconduct – This is clearly the case. Mr. Wolson advised there was never any question but that Mr. Matas intended to plead guilty; any delay was merely as a result of dealings between Counsel to settle on the appropriate recommendation.

g. Impact of the proposed penalty on the Member – As reflected in the cases dealing with reprimands, this disposition has a very significant impact on Mr. Matas. Having practiced for so long and so successfully without a blemish on his record, to have made a mistake like this at this late date must be particularly painful to him.

h. The need for specific and general deterrence – There is no need for specific deterrence in this case. Rather, this is a matter of general deterrence. No matter how well-regarded the Member, a breach of undertaking cannot be allowed to go unpunished.

i. The need to ensure the public's confidence in the integrity of the profession – This is closely linked to the other factors, particularly the need for general deterrence. It is critical the Society clearly demonstrate that no Member is immune from consequence if they fail to uphold the standards of the profession.

j. The range of penalties imposed in similar cases – The parties provided several cases in which reprimands were issued. All of them involved more serious conduct than was the case here but nonetheless established this consequence is within the range of appropriate penalties albeit at the lower end.

k. The fact this is a joint submission – While not one of the *Ogilvie* factors, for the reasons set out above, the fact this is a joint submission is very significant and must be given great weight in determining the appropriate disposition.

28. In response to a question from the Panel, Ms Klein confirmed the Society is satisfied all the necessary pieces are in place to ensure the public continues to be protected. The Society is not concerned there will be any further issues with respect to Mr. Matas' practice.

ORDER

29. The Panel finds Mr. Matas guilty of the charges of professional misconduct as set out in Count 2 of the Citation.

30. The Panel accepts the joint recommendation and orders Mr. Matas be given a formal reprimand and pay costs of $1,500 as a partial reimbursement of the costs the Society has incurred in investigating and prosecuting this matter.

Dated this 7th day of May, 2024.

James E. McLandress, K.C.

James Shaw

Keely Richmond