

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

THOMAS WILLIAM TURNER

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing: June 2, 2023

Panel: Lynda Troup (Chair)
James McLandress, K.C.
Miriam Browne (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
Gavin Wood for the Member

REASONS FOR DECISION

Background

1. Thomas William Turner is a member of The Law Society of Manitoba (the "Society") having been called to the Bar and admitted as a solicitor on June 26, 1986.
2. Mr. Turner practised in partnership with the law firm Pitblado LLP until he voluntarily withdrew from practice on January 13, 2022.
3. Upon application by Mr. Turner to return to practice, Mr. Turner was permitted to do so on September 5, 2022 following execution of an Undertaking dated August 18, 2022 that Mr. Turner practise on a graduated return to work schedule

under the supervision of Dennis Smith, at the law firm Hook and Smith. Mr. Smith executed a corresponding Undertaking on August 18, 2022.

4. On June 2, 2023, a hearing was convened before a panel of members of the Discipline Committee (the "Panel") for the purpose of conducting a hearing pursuant to *The Legal Profession Act*, C.C.S.M. c. L107 (the "Act") into charges against Mr. Turner as set forth in a Citation dated October 20, 2022.
5. At the conclusion of the hearing, the Panel, after adjourning to consider the submissions made by counsel, advised the parties that the Panel accepted the joint recommendation as to disposition presented to the Panel with reasons to follow. These are those reasons.

Citation

6. The Citation states:

As particularized in paragraphs (a) through (m) below, between 2016 and 2021, you misappropriated trust funds by repeatedly converting to your own use funds held in trust without the knowledge or permission of your client and thereby, you:

- 1) failed to discharge all of your responsibilities to your client, tribunals, the public and other members of the profession honourably and with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct*; and
- 2) paid into and withdrew from a trust account money other than trust money that was directly related to legal services that you were provide contrary to *Law Society Rule 5-44(1)*.

7. Mr. Turner, having waived the formal reading of the Citation, entered a plea of guilty with respect to both counts and admitted to the particulars as set out in the Citation.

Facts

8. The evidence related to the alleged misconduct as set out in the Citation was entered by way of an Agreed Statement of Facts. A summary of the key facts is as follows.
9. Over several years, Mr. Turner engaged in a series of acts intended to create a misleading image of his billings and collections. The acts were done to create an appearance of success but did not result in any monetary gain. Mr. Turner's actions fall under two main categories: use of trust funds to mislead and use of Statements of Account to mislead.

Use of Trust Funds

10. Mr. Turner acted as legal counsel for the estate of his father-in-law (the "Estate"). Mr. Turner was also a beneficiary of the Estate as was his wife and sister-in-law, both of whom were co-executors of the Estate. Mr. Turner collected the Estate's monetary assets and placed them in both Pitblado's pooled trust account and a specific trust investment account.
11. On six occasions between May 30, 2016 and October 28, 2016, Mr. Turner issued a Statement of Account to the Estate, paid the invoice with the Estate's trust funds, and then shortly thereafter reversed the account and returned the funds to trust. The Estate was ultimately not short any funds due to the misuse of its funds through this activity.

Use of Statements of Account

12. On 11 occasions between approximately December 19, 2018 and November 30, 2021, Mr. Turner issued Statements of Account to himself on his various personal matter files at Pitblado and then later wrote off the Statements of Account, without any payment having been made towards them. There was neither a financial benefit to Mr. Turner nor a financial detriment to the partners of his firm as a result of this activity.
13. On two occasions, once in December 2016 and again in January, 2021, Mr. Turner issued a Statement of Account to the Estate, referred to above, addressed to himself. Both accounts were written off without having received any payment.
14. On four occasions, between February 2020 and September 2021, Mr. Turner issued Statements of Account to a client, knowing there was no reasonable prospect of collecting those accounts. Each of these accounts were also written off having received no payment.

Other Misconduct

15. In addition to the foregoing, Mr. Turner also:
 - a) On several occasions inappropriately placed monies rightfully belonging to him into his law firm's trust account. None of the funds were trust funds and as such ought not to have been deposited into trust.
 - b) On several occasions, Mr. Turner personally paid or caused to be paid certain client accounts, without instruction or consent from those clients. The payments were reversed shortly after on each.

- c) In late 2021, Mr. Turner mislead counsel involved on a matter involving the Estate referenced above. He allowed opposing counsel to believe that all of the funds which had been provided on trust conditions had been held back rather than the smaller amount required, when in fact he had disbursed those funds to pay his Statements of Account, rightfully issued, pursuant to a Direction to Pay from the client.

Evidence Submitted by the Member

16. In addition to the Agreed Statement of Facts, Mr. Turner entered into evidence a letter from his legal counsel, Gavin Wood, dated February 15, 2022 and two medical-legal opinions from his treating psychiatrist, Dr. A.C. Downs, dated June 1, 2022 and February 14, 2023.
17. Mr. Wood's letter sets out a series of events, both personal (the health and wellbeing of loved ones he has had to care for) and professional (lack of consistent assistance, a series of unpaid accounts, and challenging files), that led to constraints on Mr. Turner's time and otherwise impacted Mr. Turner's ability to bill and collect to the level he had for years.
18. This is particularly true with respect to work done on behalf of the Estate, which was involved in litigation years prior.
19. Dr. Downs' letter likewise highlights the significant stress Mr. Turner was under. A fear of not living up to his financial responsibilities led to a lapse in judgment as he began to engage in uncharacteristic behaviour. The actions (as set out above) were done with the idea of "buying time" hoping that other accounts receivables would make up for gaps in projected earnings. He did this as his perception of being a "failure" intensified and his anxiety grew.

20. Dr. Downs diagnosed Mr. Turner, at periods of time, as experiencing symptoms of Anxiety Disorder Not Otherwise Specified characterized by a distorted fear of failure accompanied by worrying and a need to compensate for this fear. During these periods, his judgment as to how to deal with the fear and worry was suboptimal contributing to the behaviours described above. In each case, his adaptive mental health skills limited the anomalous behaviour and therefore the behaviours did not escalate.
21. As of his letter of June 1, 2022, Dr. Downs was of the opinion Mr. Turner had made significant progress psychologically and that it was appropriate for him to return to work on a graduated basis.
22. As of his letter of February 14 2023, Dr. Downs was of the opinion Mr. Turner was safe to practise law in an ethical and professional manner, having regard to his earnest continuation with his therapy and his consistent remorsefulness as to his actions.

Findings

23. Having regard to Mr. Turner's plea, the Agreed Statement of Facts, and the exhibits entered into evidence by the member, the Panel is satisfied that counts 1 and 2 of the Citation have been proved on a balance of probabilities.

Joint Recommendation on Disposition

24. The parties proceeded on the basis of a joint recommendation on disposition as follows: a) Mr. Turner will be suspended for a period of two months commencing no later than September 1, 2023; b) Mr. Turner will pay costs to the Society in an amount of \$4,000; and c) Mr. Turner will continue to practise under the Supervision of Dennis Smith, as per his Undertaking to the Society of August 18, 2022, for a period of 2 years from June 2, 2023 or until the Society provides him

- with written notice that the Undertaking has been varied or that he has been relieved of it, whichever occurs first.
25. A joint recommendation should be accepted by a discipline panel unless the proposed recommendation would bring the administration into disrepute or is otherwise contrary to the public interest, see *R. v. Anthony-Cook*, 2016 SCC 43.
26. Counsel for the Society took the Panel through what has been described as the “Ogilvy Factors” established in *The Law Society of British Columbia v. Ogilvy*, [1999] L.S.D.D. No. 45 and as highlighted in *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4. The factors were also addressed by counsel for Mr. Turner in detail.
- i) Nature and Gravity of Conduct
27. Although Mr. Turner did not financially profit from his actions, his conduct nonetheless remains a significant breach of the *Code of Professional Conduct*. A failure to act with integrity, the misuse of trust monies, and misappropriation generally violates the key expectations the public is entitled to have with respect to all lawyers entitled to practise law in Manitoba.
28. The Panel notes that Mr. Turner made no effort to downplay his conduct. Rather, consistently in the materials filed before the Panel and in submissions made to the Panel, Mr. Turner acknowledged the seriousness of his actions.
- ii) Age and Conduct of the Member
29. Mr. Turner, a senior member of the bar, acknowledged his actions to the Society and immediately sought legal and medical assistance. His conduct since being charged has established not only a recognition of his misconduct but a genuine desire to get well so as to practise professionally and competently.

iii) Previous Discipline

30. Mr. Turner has no previous discipline record.

iv) Impact on Others and Advantage to be Gained by Conduct

31. As noted throughout these reasons, the impact on others and the advantage to be gained by the conduct was minimal from a monetary perspective.

v) Number of Times Offending Conduct Occurred

32. Mr. Turner's conduct was not simply a one-time lapse in judgment. Rather, the conduct occurred over five years, some years being more active than others. The Panel has the reports of Dr. Downs that addresses why that conduct occurred when it did, for which Mr. Turner continues to actively seek treatment.

vi) Acknowledgement of Misconduct

33. Mr. Turner took a number of steps to acknowledge the misconduct at issue.

34. As noted elsewhere, Mr. Turner sought and listened to the advice of his legal counsel, Mr. Wood, and his psychiatrist, Dr. Downs. This included voluntarily withdrawing from practice in January 2022, responding to letters sent from the Society, engaging in professional medical therapy, undergoing a medically supervised return to work wherein he stayed within the boundaries of his Undertaking to the Society, entering a guilty plea, and agreeing to a joint recommendation on disposition.

vii) Possibility of Rehabilitation

35. In addition to the reports of Dr. Downs, supporting Mr. Turner's ability to return to practice, the Panel received into evidence a letter dated May 26, 2023 from

Dennis Smith, Mr. Turner's supervising lawyer. Mr. Smith advised that since returning to practice, Mr. Turner has conducted himself professionally throughout and has practised law at a high level of competence. Mr. Smith advises there are no professional issues with the conduct of any of Mr. Turner's files.

viii) Impact on the Respondent of Criminal or other Sanctions

36. There are no other sanctions at play.

ix) Impact of Imposed Penalty on the Member

37. Mr. Turner will be suspended from practising law for a period of two months, which the Panel expects will have financial repercussions for Mr. Turner. In addition, Mr. Turner will be required to pay the costs as agreed to.

x) Need for Specific and General Deterrence

38. While the actions taken to date by Mr. Turner are expected to address any need for specific deterrence, general deterrence remains an important consideration.

39. The joint recommendation of a suspension and payment of costs is, rightly so, a significant penalty for someone without a discipline record. It reflects the gravity of the matters at issue and highlights the conduct set out herein will be subject to significant discipline. It matters not that no monetary gain was had.

xi) Need to Ensure the Public's Confidence in the Integrity of the Profession

40. The public needs to be satisfied that members of the profession will at all times act with integrity and that monies held in trust will be protected for their benefit alone. Where there has been a significant breach of the *Code of Professional Conduct*, as has occurred here, the public must see an appropriate penalty being

imposed so as to maintain confidence in the Society and the profession as a whole.

xii) Range of Penalties Imposed in Similar Cases

41. A number of decisions were referred to the Panel to support the penalty being jointly submitted. This included *The Law Society of Manitoba v. Wasylin*, 2023 MBLS 6; *The Law Society of Manitoba v. Currie*, 2022 MBLS 5; and *The Law Society of Manitoba v. Taylor*, 2018, MBLS 13. The Panel is satisfied that the penalty at issue falls within an appropriate range having regard to case law.
42. A two-month suspension in the present case, where a member also voluntarily withdrew from practice for almost nine months, appropriately recognizes the purpose of professional discipline proceedings, which is to not punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in legal proceedings - see *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin MacKenzie, Carswell 2012, Release 3 at p. 26-1.

Conclusion on Penalty

43. Although the evidence before the Panel is that Mr. Turner did not financially gain from his conduct and that his behaviour was to merely facilitate a perception of success, his conduct was, nonetheless, serious and violated key obligations imposed on every lawyer governed by the Society. That is to act honourably, with integrity, and to never misuse trust funds. That did not occur here.
44. Mr. Turner's conduct warrants sanction. The steps taken by Mr. Turner to acknowledge his wrongdoing, seek professional medical help, and follow the guidance and recommendation of his legal counsel permits the Society to seek

a disposition short of disbarment. The joint recommendation properly takes into account all relevant factors and results in a disposition that will protect the best interests of the public. In particular, the steps taken by Mr. Turner satisfies the Panel that he will practise in a professional and competent manner going forward.

45. Having heard the submissions of counsel for the Society and for Mr. Turner, the Panel is satisfied the joint recommendation is appropriate in the circumstances.

Conclusion and Disposition

46. The Panel wishes to acknowledge the efforts of counsel including the written materials and oral submissions made. Mr. Wood's able representation of Mr. Turner not only at the hearing but throughout his dealings on this matter is to be commended.

47. The Panel hereby finds the member guilty of counts 1 and 2 of the Citation and imposes the following consequences globally in relation to both counts:

- (a) Pursuant to s. 72(1)(c)(ii) of *The Legal Profession Act*, C.C.S.M. c. L107, suspension from the practice of law for a period of 60 days, beginning on a date to be fixed by the Chief Executive Officer of the Society, and no later than September 1, 2023.
- (b) Pursuant to s. 72(1)(c)(i) of *The Legal Profession Act*, C.C.S.M. c. L107, continue to practise under the supervision of Dennis Smith, as per his Undertaking to the Society of August 18, 2022, for a period of 2 years from June 2, 2023 or until the Society provides written notice that it has varied or that the member has been relieved of it, whichever occurs first.

- (c) Pursuant to s. 72(1)(e) of *The Legal Profession Act*, C.C.S.M. c. L107, pay \$4,000.00 as a contribution to the costs of the investigation and prosecution of the charges, on the date and in the manner directed by the Chief Executive Officer of the Society.

Dated this 30th day of June, 2023.


Lynda Troup (Chair)


James McLandress, K.C.


Miriam Browne