

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**FRANK ALBERT GUSTAV JOHNSON**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**DECISION**

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**DECISION**

1. This matter was heard in the offices of The Law Society of Manitoba, 219 Kennedy Street, Winnipeg, Manitoba on Friday, October 31, 2014 commencing at 9:30 a.m.
2. The panel consisted of Mr. Douglas Bedford, Chairperson, Mr. Mark Toews and Mr. Jim Wolfe.
3. The Law Society of Manitoba was represented by Ms. Kris Dangerfield..
4. The member, Mr. Frank Johnson, was present and was represented by Mr. Steve Vincent.
5. Mr. Bedford called the meeting to order at 9:30 a.m. and declared that a quorum of the Discipline Committee of the Law Society of Manitoba (hereinafter the "Law Society") was present in accordance with Rule 5 - 94(1) as all three panel members were current members of the Discipline Committee and he and Mr. Toews held current practicing certificates. Mr. Wolfe was one of the Public Representatives appointed to the Discipline Committee.
6. Reading of the charge was waived by Mr. Johnson.
7. Mr. Johnson confirmed that he is not a member of any other Law Society. He was called to the Bar in Manitoba on June 28, 1974 and for twenty-five of the ensuing forty-

two years he has practiced law, choosing in the remaining years to pursue other endeavours.

8. The matter proceeded by way of an Agreed Statement of Facts and a Joint Submission as to sentence by Counsel. The Agreed Statement of Facts was supplemented by answers to some questions posed by the panel which answers were concurred with by both counsel. Following his counsel's submission, Mr. Johnson addressed the panel directly.

9. The panel withdrew to consider the evidence and the submissions of counsel and returned to advise that the panel members were satisfied that the facts alleged against Mr. Johnson, as summarized below, had been proven and that they amounted to professional misconduct. The panel also advised that it accepted the joint submission as to sentence. Partly in light of the fact that Mr. Johnson had a previously scheduled medical appointment and in order to attend it had to depart immediately, the panel advised that written reasons explaining why it found the joint submission appropriate would be provided. These are those reasons.

10. On three occasions over a five month period beginning in January 2010 and ending in June 2010, Mr. Johnson received money from a client. On the first occasion in January 2010, he admitted that he did not deposit the funds in his trust account as he was obligated to do pursuant to Law Society Rule 5-43(1)(a). Further, although he prepared a statement of account with respect to the monies in question, he admitted that he did not deliver the statement of account to his client. On the two subsequent occasions when Mr. Johnson received money from the same client, he again did not deposit the monies in his trust account and, although the parties agreed that on each occasion he prepared statements of account, he admitted that the statements of account were not sent to his client before he appropriated the monies in question to his own use. The total amount received from the client was \$2,500.00. The panel was advised that Mr. Johnson had performed work for the client.

11. The foregoing facts came to the attention of the Law Society in 2013. When Mr. Johnson was asked by the Law Society for an explanation, he admitted that he initially tried to mislead the Law Society by fabricating a new statement of account and a covering letter to the client that he claimed had accompanied the statement of account. Further, he admitted that he made disparaging comments to the Law Society about the character of the client, alleging the client was untruthful and irresponsible, for the purpose of concealing his conduct in taking the foregoing funds without placing them in his trust account and without sending statements of account to his client. Making misleading statements to the Law Society and fabricating documents purporting to substantiate those statements raises questions about the integrity of the lawyer pursuant to Rule 2.1-1 of the Code of Professional Conduct.

12. Mr. Johnson appeared before the Complaints Investigation Committee on October 1, 2013 and his right to practice law pending the filing of a Citation and a hearing was made subject to several conditions, the primary ones being that he was to practice only

under the supervision of another member approved by the Law Society who was to have full control of his trust and general accounts. For the last year he has practiced pursuant to those conditions. The panel was told that during the year in question, no new matters of complaint originating in that year regarding Mr. Johnson's practice had come to the attention of the Law Society.

13. In January, 2014, prior to the filing and service of a Citation advancing the foregoing facts against Mr. Johnson, he was asked by the Law Society for an explanation of documents found in another of his files. Mr. Johnson, with respect to the file in question, had asked another member two years earlier whom he knew was not practicing law at the time to do some research and to prepare some pleadings. The non-practising member prepared the documents and rendered an account for doing so to Mr. Johnson in March 2012. Mr. Johnson filed the documents in Court. In response to the Law Society's enquiries about the matter, Mr. Johnson initially misled the Law Society by saying his recollection of the matter was that only preliminary draft documents had been drafted and given to him by the non-practising member and that the member in question had agreed to reduce his statement of account in light of the limited work he had done. In the event, Mr. Johnson now admits that both of these statements were untrue. The foregoing facts formed the basis of a second Citation issued against Mr. Johnson on October 21, 2014.

14. As stated, Mr. Johnson admitted to the conduct summarized above. The Society also agreed not to proceed with certain additional allegations that it had initially advanced against Mr. Johnson.

15. Counsel for the Law Society submitted that Mr. Johnson's conduct constituted serious transgressions, particularly his attempts to mislead the Law Society when each matter first came to its attention. She described his conduct as "disgraceful" and "dishonourable." Counsel for Mr. Johnson conceded that these were indeed serious breaches of Mr. Johnson's professional obligations.

16. Counsel for the parties were in agreement that an appropriate sentence in the circumstance would be a one month suspension from practice, commencing on December 1, 2014 and expiring on December 31, 2014. They further recommended that Mr. Johnson be relieved of the conditions imposed on his practice by the Complaints Investigation Committee effective January 1, 2015. Further, they recommended that Mr. Johnson be ordered to pay to the Law Society costs in the amount of \$10,000.00 as a contribution towards the costs incurred by the Law Society in investigating and prosecuting the two Citations filed against him, which costs they agreed should be paid by quarterly instalments of \$1,249.98 commencing on March 1, 2015 through to and including December 1, 2016.

17. As stated, the panel considered the foregoing facts and recommended sentence and agreed with counsel that the recommended sentence was appropriate in the circumstances.

18. A number of facts were pertinent to the panel's conclusion that the sentence recommended was fitting. In no particular order, they are set out below:
- a) The fabrication of evidence and the making of false statements to the Law Society in response to an investigation are indeed serious transgressions as they call into question the most critical quality members of the public rely upon in engaging a lawyer -- the integrity of the lawyer. Further, the misappropriation of client funds always requires consideration of penalties at the more severe end of the range open to Discipline Committees. Anything less than a suspension for some period of time on the facts proven in this case would have in our opinion been unacceptable.
  - b) Mr. Johnson has no prior discipline history with the Law Society, which we are mindful merits favourable consideration.
  - c) Mr. Vincent advised that once the Citations were served, Mr. Johnson made it clear that he accepted responsibility for what he had done and intended to admit guilt to those allegations which he has now formally admitted.
  - d) In response to the panel's concern that Mr. Johnson tried to mislead the Society in 2014 on the 'new' matter then raised against him at a time when he was practising under supervision and surely had had time to reflect on the consequences of misleading the Society that the misleading that took place in January 2014 was best understood as "reckless" because Mr. Johnson relied only on his recollection of events of two years earlier and "dashed off" a reply to the Law Society and did not take the time to review the matter in detail or with the assistance of counsel.
  - e) Mr. Johnson has demonstrated genuine remorse for what he has done. He told the panel directly he was sorry for what he had done and promised fervently that nothing similar would again happen in his practice. He has during his career held public office and has sat on the Board of a major community facility. We are persuaded that he is sincerely remorseful and embarrassed about what he has done.
  - f) Mr. Vincent tendered three medical reports from three doctors, one of them being a summary of a 'sleep study' done with Mr. Johnson in May 2014. The conclusion of all three doctors was that Mr. Johnson has been suffering from a mild form of sleep apnea for a number of years. The consequences of this are that there is some likelihood that his judgment has been impaired from time to time and he has been susceptible to being irritable. Mr. Johnson is addressing his medical problems by following the advice of his physicians who advise that his problems are treatable and if he pursues treatment as he is, his professional transgressions should not reoccur.
  - g) Mr. Johnson advised that he has re-organized his office; delegated to an assistant much of the administrative work he did himself; and intends going forward to concentrate his practice on criminal work which he continues to find stimulating and rewarding. We are at least persuaded that in taking these steps Mr. Johnson is doing his best to address some of the

demands in his professional life that contributed to stress, overwork and lack of sleep.

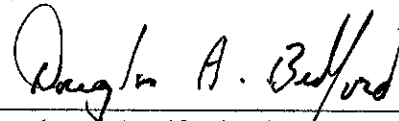
- h) In this case, there was no monetary loss to the client. Law Society and Mr. Johnson were in agreement that legal services had been provided to the client. We note that this does not excuse the failure to deposit monies in trust nor the failure to send to the client statements of account. We accept that it does distinguish, to some degree, Mr. Johnson's conduct from that of a lawyer who cavalierly appropriates a client's money to his or her own use in the absence of doing anything meaningful for the client.
- i) Mr. Vincent observed, correctly, that the amount Mr. Johnson appropriated was relatively small when compared to other cases of misappropriation. Counsel drew our attention to the reported, Manitoba discipline case of *Brent Christopher Anthony Kaneshki*, Discipline Case Digest 95-20, who was suspended from practice for three months upon it being proven that on ten occasions he took money from clients and did not deposit it in his trust account and on sixteen files took money from his firm's trust account and appropriated it for his own use without rendering accounts to the clients. In the reported case of *Robert Lewis Fisher*, Discipline Case Digest 98-05, a suspension of three months was found fit when five counts of failure to deposit retainer funds in trust and one count of misappropriation were proven. The total amount at issue in that case was \$3,350.00. In the reported case of *Paul Jason McMullan*, Discipline Case Digest 00-07, a reprimand was issued to a lawyer who fabricated a statement of account with a view to misleading the Law Society, the lawyer in that case being described in the accompanying Decision of the Panel dated January 10, 2001, as "reasonably inexperienced". And, finally, in the case of *Dean Courtney George Richert*, Discipline Case Digest 07-01, a reprimand was issued to a lawyer who was found to have misled a client regarding the enforceability of a Court Order. While Mr. Johnson was not "reasonably inexperienced" when he misled the Law Society, we think that a one month suspension from practice and an order of costs in the amount of \$10,000.00 is consistent with the four cases summarized above and imposition of a much harsher, or indeed of a much more lenient, penalty absent significantly distinguishing facts would have been unjust.
- j) Mr. Vincent reminded us of the obvious. Publication of a suspension is mandatory. Mr. Johnson, through publication of the fact that conditions of practice were imposed upon him a year ago and publication of the sentence now imposed on him will have a stain on his reputation in the community and he will lose some clients and potential clients as a consequence. He has had to incur the costs of paying the lawyer who has supervised his practice for a year; he will lose income for the month of suspension; and he must pay significant costs.
- k) In light of the steps Mr. Johnson has taken to deal with the underlying medical problem that contributed to his breaches of the Law Society's Rules and to modify his workload, there is real promise that he will not

repeat what he has done and thus there is some viable assurance that the public will not be at risk through his continued practice. As Mr. Vincent put it to us, "This was an aberration. Mr. Johnson 'gets it'."

19. Accordingly, the panel concurs that Mr. Johnson be suspended from practice for one month as detailed above, that the current restrictions on his practice be removed effective January 1, 2015 and that he pay costs in the amount of \$10,000.00 on the terms itemized above.

20. We thank counsel for the thorough presentations each made. We again observe that we appreciated Mr. Johnson's candour in his address to us and we reiterate that we "take to heart" his fervent assurances that this has been an aberration in an otherwise unblemished career and will not be repeated.

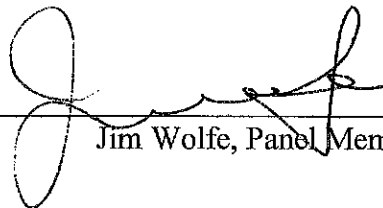
These written reasons signed the 12<sup>th</sup> day of November, 2014.



Douglas A. Bedford, Chairperson



Mark Toews, Panel Member



Jim Wolfe, Panel Member