

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DAVID MICHAEL BRADLEY

AND

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE

1. DAVID MICHAEL BRADLEY appeared before a panel of the Discipline Committee of the Benchers of The Law Society of Manitoba on Tuesday, January 13, 2015 pursuant to a Citation dated January 31, 2014. Members of the panel were Garth Smorang, Q.C., Chair; Lori Ferguson Sain; and Lorne Gibson. Ms. Darcia Senft appeared as counsel for The Law Society of Manitoba and Mr. Steve Vincent appeared on behalf of Mr. Bradley. At the hearing, the panel found Mr. Bradley guilty of four charges of professional misconduct based upon his admission to the charges set out in the Citation. The panel also accepted the joint submission on penalty. The panel agreed to provide written reasons.
2. The following exhibits were filed by consent:
 - Exhibit 1 - The Citation
 - Exhibit 2 - Statement of Agreed Facts
 - Exhibit 3 - Report from Dr. Alan Slusky dated September 3, 2013
 - Exhibit 4 - Report by Dr. Donna Chubaty dated October 6, 2014
 - Exhibit 5 - Letter from Samuel Wilder Q.C. to The Law Society of Manitoba dated September 16, 2013

Exhibit 6 - Letter from Joseph Wilder Q.C. to The Law Society of
Manitoba dated September 24, 2013

3. Mr. Vincent, on behalf of Mr. Bradley, waived the formal reading of the Citation and Mr. Bradley admitted to the allegations contained in the Citation.
4. Further, Mr. Bradley admitted membership in The Law Society of Manitoba, admitted valid service of the Citation upon him, and indicated he had no objection to any of the panel members either on the basis of bias or conflict.
5. With regard to Exhibit 2, the Statement of Agreed Facts, Mr. Bradley admitted that the witnesses available to The Society would, if called, testify substantially in accordance with the facts set out therein. Further, Mr. Bradley admitted that his conduct, as described within the Statement of Agreed Facts, constitutes professional misconduct.
6. The Citation (Exhibit 1) involved four separate allegations as follows:
 - a) Breach of duty to act with integrity contrary to Rule 2.1-1 of *The Code of Professional Conduct* in that Mr. Bradley misled his clients.
 - b) Breach of duty to act with integrity contrary to Rule 2.1-1 of *The Code of Professional Conduct* in that Mr. Bradley misled opposing counsel.
 - c) Actions contrary to Rule 3.2-1 of *The Code of Professional Conduct* in that Mr. Bradley failed to provide his clients with the quality of service required of a lawyer which is service that is competent, timely, conscientious, diligent, efficient and civil.
 - d) Actions contrary to Rule 7.2-5 of *The Code of Professional Conduct* in that over a period of approximately six months Mr. Bradley failed to answer with reasonable promptness all

professional letters and communications from opposing counsel that required answers.

7. Ms. Senft began by filing a Book of Authorities and proceeded to review the agreed facts as they related to the allegations. She then reviewed the Authorities provided to the panel.
8. Ms. Senft pointed out that Mr. Bradley has been a lawyer for approximately 23 years. As to prior discipline history, he had accepted a formal Caution in December 2008 as a result of his failure to act with integrity and his failure to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation for failing to advance a client's matter and misleading the client as to the progress of that matter.
9. Ms. Senft then briefly reviewed the facts of the current matter leading to the four charges in the Citation, in which Mr. Bradley was retained by clients to advance a fire insurance claim against an insurance company in 1999. After filing a Statement of Claim and taking some early steps to advance the action Mr. Bradley did nothing further of consequence on the file. In addition:
 - From 2002 until 2010 Mr. Bradley misled his clients advising them that he had been taking various steps to advance the court action when he had not.
 - He fabricated information including the details of what were fictitious motions he had advanced and fictitious court orders which he told his clients had resulted in orders of costs against the defendants.
 - He fabricated accounts of plans to proceed to trial and of matters being delayed due to a particular judge falling ill.
 - He did not advise his clients of a Notice of Motion brought by the defendants to dismiss the action for delay and instead advised his client

that the insurance company was prepared to engage in some form of settlement discussions when they were not.

- He told his client that he had set up a conference with a judge to set a trial date when he had not.
- He falsely led opposing counsel and his colleagues to believe that the client intended to oppose the motion for delay.
- He ultimately consented to an order dismissing the Statement of Claim for delay without his client's knowledge of the existence of the motion or that he had consented to it.
- After the claim had been dismissed, he continued to communicate to his client advising that matters were progressing in court and that he had appeared before and met with a judge regarding the scheduling of a trial date.
- He further fabricated information about his activities in co-ordinating a trial of the matter in communications with his client.

10. Ms. Senft then reviewed the joint submission as to disposition set out beginning at paragraph 55 of the Statement of Agreed Facts as follows:

- a) Mr. Bradley be suspended from the practice of law for a period of one year commencing March 1, 2015;
- b) Mr. Bradley's practicing certificate be cancelled and subject to the following conditions:
 - i. Mr. Bradley must continue to receive counselling for so long as is recommended by his psychologist and comply with any treatment prescribed by his psychologist;
 - ii. Mr. Bradley must authorize and direct his psychologist to provide to the Society a written report every four months confirming that he continues to receive counselling and is complying with any prescribed treatment and immediately provide to the Society a written report if it appears that he

is not complying with recommendations regarding counselling or treatment, or if he is no longer receiving counselling or treatment; and

iii. Upon his resumption of active practice, Mr. Bradley must practice under supervision for a period of one year by a supervisor approved by the Law Society, with quarterly reports being provided to the Society and any concerns being brought to the Society's immediate attention;

c) Concurrent with the commencement of his suspension, Mr. Bradley will be required to pay costs to the Society in the amount of \$5,988.00 as a contribution towards the costs associated with the investigation, prosecution, and hearing of this matter.

11. Ms. Senft reviewed the Book of Authorities, including excerpts from texts, decisions of Discipline Committees in other Canadian Provinces, and previous decisions of Discipline Committees of the Law Society of Manitoba in similar circumstances. Ms. Senft advised that the joint submission would be an appropriate sanction and was within the range of appropriate sanctions that were imposed in similar cases. She urged the panel to adopt the joint submission and also pointed out the Manitoba Court of Appeal decision in *R. v. Thomas* (2000) in which the court said that although the panel is not bound by a joint recommendation of counsel, there would need to be clear and cogent reasons for departing from a joint recommendation as to disposition.
12. Mr. Vincent, on behalf of Mr. Bradley, then made submissions. He characterized this as a sad case given its impact on the clients who were misled, its impact on the image of the legal profession, and its impact upon Mr. Bradley whom he describes as having been a productive and successful lawyer who articulated, was an associate with, and became a partner at his current firm. Mr. Vincent described Mr. Bradley as competent in all respects except on this and the prior matter for which he was cautioned in 2008.

13. Mr. Vincent thoroughly reviewed with the panel Dr. Slusky's report (Exhibit 3), in which Dr. Slusky assessed Mr. Bradley, and Dr. Chubaty's report (Exhibit 4), in which the psychologist describes therapeutic sessions with Mr. Bradley on 20 occasions between February and September 2014.
14. In particular, Mr. Vincent focussed on the portion of Dr. Chubaty's report titled "Risk Management" which sets out in some detail the progress that has been made in enhancing Mr. Bradley's understanding of the factors that placed him at risk to engage in the currently reported professional misconduct.
15. Mr. Vincent then reviewed letters from Mr. Bradley's partners Samuel and Joseph Wilder, both filed as Exhibits, in which it is confirmed that a full review of Mr. Bradley's existing practice has been undertaken and that such review did not raise concerns similar to those which arose in the matter before the Discipline Committee.
16. Mr. Vincent then reviewed and commented upon a number of mitigating factors to be considered in determining the proper penalty for acts of professional misconduct, including:
 - Attitude
 - Age and experience
 - Prior record
 - Guilty plea and remorse
 - Restitution
 - Otherwise good character
 - Other penalties which Mr. Bradley will endure as a result of his behaviour; and
 - Impact on the client

17. As to the question of specific deterrence, Mr. Vincent characterized a one year suspension as a “practice killer”. He advised that Mr. Bradley is “horrified” by what he has done in this case.
18. Mr. Vincent urged the panel to accept the joint submission and sought to distinguish the cases from the Book of Authorities where lawyers committing similar acts had been disbarred.
19. Mr. Bradley then spoke to the panel and to his clients who were in attendance at the hearing. Firstly, he apologized directly to his clients. He then apologized to the Law Society for the resources that were expended in investigating and prosecuting this complaint. He then apologized to the profession generally regarding the impact that his behaviour will have on the reputation of lawyers in our community. He then apologized to his colleagues at Wilder, Wilder and Langtry and expressed regret that his ongoing clients will now have to transition their matters to other lawyers as a result of his one year suspension. Finally, he apologized to his family and friends who would be impacted by his behaviour and the resulting suspension (especially his spouse).
20. Mr. Bradley advised that he had sought psychological therapy in order to try and better understand why he behaved in the manner he did. He offered that in the future he needs to refer out work that he is unable to do and not to be so prideful in retaining volumes of files that are unmanageable.

DECISION

21. This panel is obliged, pursuant to Law Society Rule 5-96(5), to make and record a resolution stating which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the panel and further, whether or not,

by the acts or omissions so proved, the member is guilty of professional misconduct.

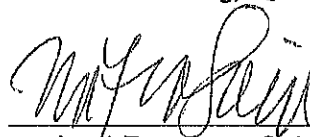
22. In this case, upon review of the evidence before it, and, as noted at the hearing, the panel is of the view that all of the acts or omissions stated in the Citation and the Citation have been proved and constitute professional misconduct.
23. As to disposition, the panel accepted the joint submission as contained in the Statement of Agreed Facts and set out above. In so doing, however, the panel wishes to express its view that Mr. Bradley's behaviour in this matter, combined with his previous Caution for similar behaviour, put him on the brink of disbarment. If there were to be any further charges proven in the future against him evidencing similar behaviour, there would be a serious question about his fitness to practice law.
24. The Law Society of Manitoba's mandate is to protect the public and to ensure that lawyers who are licensed to practice law will comply with the Society's Rules and *The Code of Professional Conduct*. There are many instances where lawyers, who have shown over time, an inability to comply with those Rules and the Code, have been disbarred. In this case Mr. Bradley's actions were wholly inconsistent with his duties to his client and to opposing counsel. His behaviour is entirely unacceptable and is deserving of a significant penalty which, in the panel's view, is one step short of disbarment.
25. Accordingly, this panel hereby orders that:
 - a) Mr. Bradley be suspended from the practice of law for a period of one year commencing March 1, 2015;
 - b) Mr. Bradley's practicing certificate be cancelled and subject to the following conditions:

- i. Mr. Bradley must continue to receive counselling for so long as is recommended by his psychologist and comply with any treatment prescribed by his psychologist;
 - ii. Mr. Bradley must authorize and direct his psychologist to provide to the Society a written report every four months confirming that he continues to receive counselling and is complying with any prescribed treatment and immediately provide to the Society a written report if it appears that he is not complying with recommendations regarding counselling or treatment, or if he is no longer receiving counselling or treatment; and
 - iii. Upon his resumption of active practice, Mr. Bradley must practice under supervision for a period of one year by a supervisor approved by the Law Society, with quarterly reports being provided to the Society and any concerns being brought to the Society's immediate attention;
- c) Concurrent with the commencement of his suspension, Mr. Bradley will be required to pay costs to the Society in the amount of \$5,988.00 as a contribution towards the costs associated with the investigation, prosecution, and hearing of this matter.

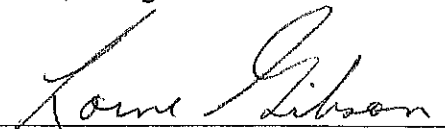
DATED this 29 day of January, 2015.



Garth Smorang, Q.C., Chair



Lori Ferguson Sain



Lorne Gibson