

1 THE LAW SOCIETY OF MANITOBA and

2 SHELLEY LOREEN OVERWATER

3 REASONS

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6 PANEL MEMBERS: William S. Gange (Chair)
7 Catherine Finnbogason
8 Suzanne Hrynyk
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11 COUNSEL FOR THE LAW SOCIETY OF MANITOBA:
12 Darcia A.C. Senft
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14 COUNSEL FOR MEMBER: Saul Simmonds
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17 Hearing held at The Law Society of Manitoba,
18 219 Kennedy Street, Winnipeg, Manitoba, March 26, 2015.
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22 **FOUR SEASONS REPORTING**

23 **91 Ashford Drive**

24 **Winnipeg, Manitoba R2N 1K7**

25 **(204) 256-2343**

1 THE CHAIR: Thank you. The panel has met and
2 we are in agreement, and I am ready to, on behalf of the
3 panel, provide our reasons with respect to sentencing.

4 Ms. Overwater, this is a very sad case, as are
5 all cases that I have ever been involved in as a member of
6 the Discipline Committee.

7 To have listened to Mr. Simmonds describe your
8 struggle to become a lawyer, and to have succeeded in
9 achieving what probably was a very significant milestone,
10 and then to see all of this come crashing down is very,
11 very sad to listen to.

12 We have accepted the statement of facts that
13 are set out as Exhibit 3, and have heard the guilty plea
14 with respect to the citations, and our role today is with
15 respect to sentencing.

16 And the question before us is as was set out
17 by the Court of Appeal of Manitoba by Chief Justice Scott
18 in the decision of R. v. Thomas, in which Justice Scott
19 said the principle issue before this court, or in this
20 situation, this panel, is whether in all of the
21 circumstances the sentencing judge had good cause to reject
22 the joint recommendation, and the Chief Justice gave a
23 number of points that ought to be followed in basically
24 saying that there needs to be, if a joint recommendation is
25 not going to be followed, there needs to be clear and

1 cogent reasons for departing from a recommendation, and so
2 we have considered that issue.

3 In doing so, we have given consideration to the
4 text "Lawyers & Ethics: Professional Responsibility and
5 Discipline" by Gavin MacKenzie, and at page 26.49
6 Mr. MacKenzie stated that,

7 "Cases in which lawyers have been
8 permitted to resign are usually those
9 in which the misconduct is sufficiently
10 serious to justify disbarment but in
11 which mitigating circumstances persuade
12 the benchers that the stigma of
13 disbarment in addition to the withdrawal
14 of the lawyer's right to practise law
15 would be unfair. The practical result
16 of the penalty is the same, except to the
17 extent that an admission committee may
18 give more favourable consideration to an
19 application for readmission brought by a
20 former lawyer who has been given
21 permission to resign."

22 And, as was cited to us from the textbook, "The
23 Regulation of Professions in Canada", James T. Casey, in
24 which Mr. Casey reviews a number of principles with respect
25 to sentencing, and at page 14.7 refers to the Jaswal case

1 in which the Newfoundland court considered factors to be
2 considered in determining an appropriate sanction,
3 including the nature and gravity of the proven allegations,
4 the age and experience of the offender, the previous
5 character of the offender, the presence or absence of any
6 prior complaints, the age and mental condition of the
7 parties complaining, and those types of concerns.

8 And in particular Mr. Casey cites a number of
9 mitigating factors which ought to be considered in
10 determining the proper penalty for an offence set out at
11 page 14.6 and following, including the attitude since the
12 offence was committed, the age and inexperience of the
13 offender, whether the misconduct is the individual's first
14 offence, and whether the individual has pleaded guilty to
15 the charge of professional misconduct, and whether
16 restitution has been made by the offender, and the good
17 character of the offender.

18 In MacIver, a panel of the Discipline Committee
19 considered the issue of whether a person should be
20 permitted to resign, and in that case decided that the
21 joint recommendation would not be followed, because the
22 facts of that case did not support the proposed
23 recommendation as an appropriate penalty.

24 In this case we have considered the various
25 factors. There are aggravating factors, Ms. Overwater,

1 and those aggravating factors include the fact that you
2 misled clients, that you misled The Law Society of
3 Manitoba, that you undertook certain deliberate acts, such
4 as signing letters under the name of one of the persons
5 that was working for you without that person's permission.

6 We also see that there were certain aggravating
7 factors in that you did have a support team. You had an
8 accountant, you had a bookkeeper. It would appear that you
9 did not lean on those people enough.

10 There are other factors, however, that we have
11 placed importance upon. One is your remorse. It is quite
12 clear that this has been a shameful and humiliating
13 experience for you.

14 Your guilty plea is one that all of the
15 authorities deemed to be an appropriate fact for us to
16 consider.

17 You did cooperate with The Law Society. It
18 would appear that there was no premeditation to your
19 actions. It would appear that there was no greed, that it
20 was not due to your attempt to enrich yourself, and we see
21 no personal benefit to this.

22 We are in agreement that your inexperience
23 would appear to be the most important factor that led to
24 this very tragic result.

25 When Mr. Simmonds mentioned that you had 700

1 open files in your office, that is a staggering number of
2 files for you to have opened in such a short period of
3 time. With that much work, and with the lack of experience
4 that you had, no good could come from that, and
5 unfortunately no good did come from that.

6 I say no good, that is probably not fair of me,
7 because I accept Mr. Simmonds word that he has received
8 numerous emails and letters from clients in support of you.

9 For all of these reasons we are prepared to
10 accept the joint recommendation and, first of all, we are
11 prepared to accept the guilty plea.

12 Secondly, we are prepared to permit you to
13 resign from The Law Society of Manitoba, and we agree with
14 the joint recommendation that costs in the amount of
15 \$15,000 be paid by you to The Law Society with respect to
16 the investigation, prosecution and hearing of the matter.

17 I just want to say, it gives none of us any
18 pleasure in seeing you, after having achieved a very
19 remarkable thing in obtaining your law degree, and
20 obtaining your call to the bar. I am very sorry that this
21 has happened, and all of us wish you the best in your
22 future endeavours.

23 MS. SENFT: Just one clarification, I think it
24 is inferred from the panel's reasons, Mr. Chair, but the
25 panel is making a finding under Rule 596(5)?

1 THE CHAIR: That is correct.

2 MS. SENFT: That the acts stated and the
3 citations are proved to the satisfaction of the panel, and
4 by the acts proved she is guilty of professional misconduct
5 to breaching the rules and code references?

6 THE CHAIR: Yes, that is right, Ms. Senft.

7 MS. SENFT: Code rules references? Thank you.

8 THE CHAIR: I should have made that clear.

9 MS. SENFT: That's fine. I just wanted to
10 clarify. I believe that's what you were saying.

11 THE CHAIR: Yes.

12 MS. SENFT: And then finally, does the panel
13 direct that the transcript of the oral reasons become the
14 written decision?

15 THE CHAIR: Yes. I do not intend that we will
16 provide anything further than this, so I would like to
17 receive a copy of the transcript so that we can review it
18 and then sign off on it.

19 MS. SENFT: And sign it as your reasons. Thank
20 you.

21 THE CHAIR: Thank you. Good luck.

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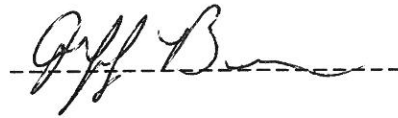
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24 (REASONS CONCLUDED AT 11:30 A.M.)

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CERTIFICATE OF REPORTER

I, JEFF BRUCE, Court Reporter, do hereby certify that the foregoing pages, numbered 1 to 7, are a true and accurate transcript of the reasons herein as recorded by me to the best of my skill and ability.

A handwritten signature in cursive script, appearing to read "Jeff Bruce", is written over a horizontal dashed line.

Jeff Bruce


Court Reporter

THE PRECEDING 8 PAGES CONSTITUTE
THE DECISION AND REASONS FOR
DECISION OF THE DISCIPLINE COMMITTEE
OF THE LAW SOCIETY OF MANITOBA
RENDERED THE 26th DAY OF MARCH, 2015,
IN THE MATTER OF:


SHELLEY LOREEN OVERWATER



William S. Gange, Chair



Catherine Finnbogason



Suzanne Hrynyk