

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

BARRY LEE GORLICK, Q.C.

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

DECISION

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Hearing Dates: March 10-13, March 27, May 15, 2015

Panel: Heather Leonoff, Q.C. – Chair
Wendy Stewart
Lorne Gibson (Public Representative)

Counsel: R. Kravetsky for the Law Society of Manitoba
G. Wood for the Member

DECISION

Introduction

1. Barry Lee Gorlick, Q.C. is a member of The Law Society of Manitoba (the “Society”), having been called to the bar in 1980. Three citations, dated November 19, 2012, April 1, 2014 and October 15, 2014 were prepared and served on Mr. Gorlick by the Society. Mr. Gorlick consented to the three citations being heard together and entered guilty pleas to 15 counts of professional misconduct. The charges are attached as an appendix to these reasons. They may be summarized as follows:

November 19, 2012 Citation ¹

- Failure to serve a client in a conscientious, diligent and efficient manner contrary to Chapter 2 of the *Code of Professional Conduct*.
- Failure to act in a courteous manner contrary to Chapter 16 of the *Code of Professional Conduct*.

April 1, 2014 Citation

- Five counts of failure to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct*.

October 15, 2014 Citation

- Failure to provide courteous, thorough and prompt service contrary to Rule 3.2-1 of the *Code of Professional Conduct*.
- Five counts of failure to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct*.
- Acting in a conflict of interest contrary to Rule 3.4 of the *Code of Professional Conduct*.
- Acting for both a borrower and a lender in a loan transaction contrary to Rule 3.4-12 of the *Code of Professional Conduct*.

2. The facts surrounding the various counts are not in dispute and were put before the panel through an agreed statement. The issue for this panel is the appropriate penalty. The Society argued that as a matter of general deterrence and protection of the public, Mr. Gorlick should be disbarred. Mr. Gorlick called four and one-half days of testimony and provided over sixty reference letters and numerous documents in support of his position that he should be allowed to practice under supervision and with conditions. The evidence tendered on his behalf will be reviewed in detail below.

¹ This citation refers to the *Code of Professional Conduct* in effect until December 31, 2010.

The Facts

November 19, 2012 Citation

3. The facts surrounding the November 19, 2012 citation arose between 1994 and 2011. In 1994 the client M.C. retained Mr. Gorlick to represent her in a case of medical malpractice. The client had suffered complications following surgery that resulted in an above the knee amputation of her right leg. Mr. Gorlick issued a statement of claim in 1996 naming the hospital and three doctors as defendants. One of the doctors was not served with the claim.

4. Mr. Gorlick obtained expert reports that suggested that the doctor who had not been served may have been negligent. The doctor had moved to the United States and Mr. Gorlick made some efforts to have him served but was unsuccessful. In 1998, Mr. Gorlick was advised that the doctor had a brother living in Winnipeg. Mr. Gorlick never attempted to contact the brother for assistance with service. In 2002, Mr. Gorlick received information that the doctor was practicing medicine in Toronto and he was provided with home and work addresses. However, he never arranged to have the doctor served or to obtain an order of substitutional service.

5. The matter proceeded through a number of pre-trial conferences. The matter was set down for trial in 2003 and again in 2004 but both trial dates were cancelled.

6. In June 2005 the lawyer for the two doctors who had been properly served prepared and delivered documents to Mr. Gorlick dealing with a consent dismissal. The lawyer subsequently wrote to Mr. Gorlick eight times over a period of three years seeking return of the documents.

7. The lawyer for the hospital indicated that he would move after September 1, 2005 to dismiss the claim against his client. Mr. Gorlick wrote to counsel on September 22, 2005 but thereafter took no steps to advance the claim. More particularly he did not move to have the matter set for trial; he did not return the documents dealing with the consent dismissal; and he did not take any steps to serve the third doctor.

8. Between June 2005 and 2010 Mr. Gorlick did not communicate with his client in any detail about the status of her claim. Finally in August 2010, Mr. Gorlick told his client he would try to have the matter set for trial at the earliest possible time but he took no steps to do so.

9. In October 2010 the hospital filed a motion to dismiss for delay. In February 2011 the two doctors who had been served filed a motion to dismiss for delay and the third filed a motion to dismiss for failure to serve and delay. In September 2011 the motions were granted and the actions dismissed. The client subsequently sued Mr. Gorlick and the case was settled.

10. As a result of these facts, Mr. Gorlick entered guilty pleas to one count of failing to serve his client in a conscientious, diligent and efficient manner and one count of failing to act in a courteous manner by failing to respond with reasonable promptness to communications from opposing counsel.

October 15, 2014 Citation

11. The October 15, 2014 citation deals with matters arising out of Mr. Gorlick's representation of D.H.

12. D.H. was a client of Mr. Gorlick's beginning in 2000. She retained him to provide independent legal advice on a proposed marital property agreement and to assist with her divorce. D.H. and her husband signed a comprehensive settlement agreement on December 22, 2000. This agreement purported to be a final settlement pertaining to the division of marital property, child support and spousal support. The parties were divorced on December 10, 2001.

13. In 2003 D.H. contacted Mr. Gorlick and sought his assistance to deal with matters related to outstanding child support. By June of 2004, D.H. raised with Mr. Gorlick the possibility of setting aside her pre-nuptial agreement on the basis that she was subject to undue influence and threats at the time it was executed.

14. Mr. Gorlick met with the client from time to time throughout 2004-2006 but he took no steps to investigate the issues or to bring the matter before the courts.

15. Commencing in February of 2007, Mr. Gorlick began to tell the client a series of lies concerning the status of her case. He told her on February 28, 2007 that the case was ready to proceed to hearing when in fact no documents had been filed in court. Later that year he told her that the matter had been set for arbitration when in fact no such arbitration had been scheduled and none took place.

16. In 2007 D.H. raised with Mr. Gorlick the issue of whether she could set aside her separation agreement. Mr. Gorlick agreed to act for the client and to seek to set aside the separation agreement even though he was in a conflict of interest, having provided her with advice at the time that she signed the agreement.

17. Mr. Gorlick met with the client periodically in 2007 and 2008 but took no steps to advance the case. In June 2009, Mr. Gorlick had the client sign an affidavit but never filed it in court or used it in any other way.

18. On December 9, 2009 Mr. Gorlick delivered a notice to arbitrate child support issues on counsel for the husband who expressed surprise that this had arrived when he had not heard from Mr. Gorlick on this matter in over two years.

19. There was little activity on the file in 2010 and 2011 and then on December 21, 2012 Mr. Gorlick filed an application in court seeking to set aside the separation agreement. No affidavit or other materials were filed in support.

20. The parties met in July 2013 to try to reach a settlement. Thereafter, counsel for the husband wrote Mr. Gorlick in August, September, October, November and December, seeking to obtain information concerning the settlement. Finally, in February 2014 Mr. Gorlick ceased to be D.H.'s lawyer following a Law Society audit and his subsequent interim suspension.

21. Throughout the years 2008-2014 Mr. Gorlick told the client dozens of lies concerning the status of her case. These included:

- that her case had been heard by the Supreme Court of Canada and that the Court had set aside her pre-nuptial agreement;
- that the Manitoba Court of Appeal had set aside her separation agreement;
- that courts in Colorado, Arizona and Germany were hearing aspects of the case and that the husband's assets had been frozen;
- that Toronto lawyers had travelled to Winnipeg to appear on her behalf to argue the child support issues and that they had been successful;
- that several expert witnesses had been engaged to undertake a forensic audit and that they had estimated the husband's net worth to be \$400 million dollars;
- that the court had ordered the husband to post a \$30 million dollar note with the Royal Bank that could be drawn on for the support of the children;
- that the judge had ordered the husband's passport seized;
- that the case was being heard in court in Brandon and that Mr. Gorlick was driving the judge to and from court;
- that the judge would deliver reasons in February 2014 and that there was a hearing scheduled for February 11, 2014 to argue costs and outstanding contempt motions;
- that when the client tried to find her matter in the Queen's Bench on-line registry, that her former brother-in-law (and a member of the bar) had improperly altered the court records;
- that when the client insisted that she wished to attend court, that the matter would be held in Chambers and she was not entitled to attend;
- that when the client insisted on written confirmation of the status of her case, that the court orders included a property settlement of \$1.18 million; spousal arrears of \$1.2 million; and on-going spousal support of \$21,000 gross or \$15,000 net per month.

22. By 2010 it became clear to Mr. Gorlick that his client D.H. was in severe financial difficulty. D.H. sought a loan from the Royal Bank. In a letter dated April 9, 2010, Mr. Gorlick wrote to the bank on behalf of his client indicating that it was anticipated that the client would be in receipt of in excess of \$200,000 prior to June 30th. There was no basis for Mr. Gorlick to offer this assurance.

23. On December 16, 2010 Mr. Gorlick wrote to the Canada Revenue Agency on behalf of D.H. seeking to have the Agency forebear collection of outstanding tax arrears. He advised CRA that D.H.'s claim for support and for a further property settlement would be adjudicated sometime in 2011. There was no basis for Mr. Gorlick to make this assurance.

24. Mr. Gorlick did assist D.H. to obtain a loan in 2012 from a private lender. This loan required monthly payments of \$5,009.15 per month. The client, however, did not have the income to cover this loan as she was not in receipt of any of the money that Mr. Gorlick had led her to believe she would be receiving.

25. In order to assist D.H. with her financial issues, Mr. Gorlick began to cover her mortgage payments. Between March 30, 2012 and December 3, 2012 he made eight mortgage payments on her behalf for a total of \$40,073.20. He also personally loaned her money beginning in May 2012 to January 2014 totaling \$95,420. The client repaid some of this money but in total Mr. Gorlick provided the client with slightly over \$100,000 of his own money. (As will be seen below, he also provided her with money that he obtained through misappropriation of client trust funds.)

26. Mr. Gorlick approached two further private lenders to seek to obtain funds for the client. In a letter dated October 15, 2012 he advised one potential lender (J.C.) that the client was presently embroiled in court proceedings, was seeking several million dollars and that the proceedings would be concluded within a year. This was a fabrication as no court proceedings had been filed. J.C. declined to make the requested loan.

27. In December 2012, Mr. Gorlick then approached one of his clients, E.B., to seek funding on D.H.'s behalf. To induce E.B. to make the loan, Mr. Gorlick told him that D.H. had a meritorious claim against her husband and would receive several million dollars. As a result of these representations E.B. loaned D.H. a total of \$200,000. Mr. Gorlick represented both the lender and borrower and provided false information to the lender.

28. These facts gave rise to the eight counts of professional misconduct set out in the October 15, 2014 citation including the five counts of failing to act with integrity related to the false representations made to D.H., the Royal Bank, the Canada Revenue Agency, J.C. and E.B. Mr. Gorlick also failed to provide thorough and prompt service to D.H.; he acted in a conflict of interest by representing D.H. to set aside the separation agreement when he had provided independent legal advice at the time it was executed; and he acted for both the lender E.B. and the borrower D.H. on a loan transaction.

April, 2014 Citation

29. The Law Society conducted an audit of Mr. Gorlick's firm in February, 2014. The audit revealed that Mr. Gorlick had misappropriated trust funds belonging to two clients, M.G. and WCS Ltd.

30. M.G. retained Mr. Gorlick in 2013 to assist him with issues arising out of his marital break-up. In August 2013 Mr. Gorlick received funds in trust for M.G. from the sale of family assets.

31. In November and December 2013 Mr. Gorlick misappropriated \$87, 329.75 belonging to M.G. by causing trust cheques to be issued and delivered as follows:

- November 8, 2013 - \$9,200 paid to Royal Bank on behalf of his client D.H.
- November 15, 2013 - \$44, 129.75 paid to a construction firm for work done on the Gorlick family home.

- November 22, 2013 - \$9,000 to Royal Bank into an account in the name of Mr. Gorlick's mother, and over which Mr. Gorlick had signing authority. Subsequently \$6,000 was transferred to D.H.
- December 2, 2013 - \$25,000 to Royal Bank into a joint account of Mr. Gorlick and his wife. Subsequently three cheques totaling \$13,000 were then drawn by Mr. Gorlick and paid to D.H.

32. On December 18th and 20th, 2013 Mr. Gorlick caused four additional cheques to be prepared and charged against the M.G. trust account. The two cheques issued on December 18th totaled \$20,000. They were cancelled and replaced by cheques in identical amounts on the 20th. These cheques were drawn in favour of the Royal Bank and payable into Mr. Gorlick's mother's account. They were never negotiated.

33. On January 31, 2014 Mr. Gorlick caused a trust cheque to be written against the trust account of his client WCS Ltd. for \$10,060 payable to a numbered company. The numbered company held D.H.'s mortgage (discussed above) and the funds were ostensibly intended to cover her payments. The cheque was never used.

34. In all cases documents were prepared by Mr. Gorlick, including letters and notes so as to make it appear that the cheques were for legitimate purposes and for the benefit of the clients M.G. and WCS Ltd.

35. Based on these facts Mr. Gorlick entered guilty pleas to five counts of failing to act with integrity being the misappropriation that took place between November 8 and December 2, 2013; the creation of the four cheques on December 18th and 20th; the creation of the cheque drawn against the WCS Ltd. trust account; and two counts of failing to act with integrity by creating false documentation.

Discipline History

36. On November 25, 2011 Mr. Gorlick entered a plea of guilty to one count of professional misconduct for failure to serve his client in a conscientious, diligent and efficient manner,

contrary to Chapter 2 of the former *Code of Professional Conduct*. He was fined \$1500 and ordered to pay costs of \$3000.

37. The facts that led to this charge occurred in the years 2003 to 2009. Mr. Gorlick was retained in November 2000 to represent a corporate client M.S. in a franchise dispute. During the first two years the case proceeded appropriately. However, after mid-2003 Mr. Gorlick failed to take steps to pursue the client's claim and his client was noted in default on November 9, 2005. Mr. Gorlick did not tell his client this. The client continued to press for exams for discovery to be held and was unaware that he had been noted in default until he retained other counsel in March 2009.

Defence Evidence

38. Mr. Gorlick testified on his own behalf. He began his testimony by apologizing to the profession, his firm and his clients for what he described as his "despicable" behaviour. He provided evidence concerning his early life and about the strong friendships he made during law school and throughout his career. He outlined many of his accomplishments over the past thirty years, including his years of service to the Manitoba Bar Association and the Canadian Bar Association, culminating in his becoming-president of the national body in 1998. As president of the CBA, Mr. Gorlick represented Canada's lawyers at events across this country and around the world including in London, Paris, Dublin, Nairobi, Naples and Washington. As well, he appeared as counsel for the CBA in its intervention in a case before the Supreme Court of Canada. Mr. Gorlick also served his community by volunteering with a number of charitable organizations including Osteoporosis Canada, the Zig Zag Yacht Club and the Rainbow Society.

39. Mr. Gorlick provided evidence concerning the growing pressures that he began to face starting in around 2006. It was in this year that his eighty year old mother's health deteriorated significantly and from 2006-2014 Mr. Gorlick began to face ever increasing emotional pressures and financial commitments, trying to maintain his mother in her own home. Mr. Gorlick also began to experience challenges in his marriage and he separated from his wife in 2008 after twenty-five years of marriage. Mr. Gorlick and his wife choose not to enter into a formal

separation agreement and Mr. Gorlick continued to make financial contributions to his wife and four children in the same manner as he had done prior to the separation. He saw a therapist in 2008 to try to deal with the stress and guilt he experienced caused by the break-up of his marriage.

40. Throughout these years Mr. Gorlick also maintained a very busy practice and he assumed many responsibilities within his firm including managerial responsibilities and mentoring younger lawyers. He worked long hours and took infrequent vacations which added to his stress.

41. In his testimony, Mr. Gorlick discussed the circumstances surrounding his interactions with D.H. and the misappropriations. He indicated that at the time, he had no real understanding of why he had behaved with D.H. in the manner that he did, other than to say that he froze on the file. In respect of the misappropriations, he acknowledged that he had made up stories and created a false paper trail to requisition the cheques. For example, he told his secretary that M.G. was undertaking a construction project in order to explain the \$44,129.75 cheque that was ultimately used to cover a bill for work on the Gorlick home. He admitted in his testimony that he knew he had crossed a serious line when he misappropriated trust funds but indicated that he was able to compartmentalize his thinking and put this out of his mind. He explained that he put the \$20,000 worth of cheques payable to the Royal Bank in his car but he could not bring himself to deposit them. He also testified that he thought about getting help from the Law Society or the Bar Association Lawyers At-Risk program but that he decided against contacting anyone for help. He further offered that he intended to come up with a plan to deal with his issues over the holiday break in December 2013 but instead he began to work on an important new case and took no steps to address his problems. He said he was relieved when the Law Society began its investigation as he could finally stop living all the lies.

42. In addition testifying on his own behalf, Mr. Gorlick called eleven witnesses to speak to his character and submitted over sixty reference letters. The individuals who testified and provided letters of support include respected members of the legal profession, both from Manitoba and from across Canada, as well as community members and former clients. All of these people spoke very highly of Mr. Gorlick. What becomes very clear when all of this

evidence is considered together is that Mr. Gorlick served the legal profession, the community and his clients with great skill, integrity and compassion throughout his over thirty year career.

43. Against this background, it is difficult to understand what led Mr. Gorlick to lie to D.H. over a course of several years, to lie to others including his long-time client E.B. and ultimately to misappropriate trust funds. Two expert witnesses testified on behalf of Mr. Gorlick to provide insight into why this may have occurred.

44. Dr. Toby Rutner received his Ph.D. in psychology from the University of Manitoba in 1972 and has carried on a private practice in psychology since that date. He first saw Mr. Gorlick in February 13, 2014 shortly after the Law Society audit and has continued to provide on-going therapy.

45. Dr. Rutner's opinion was that Mr. Gorlick is a person for whom status and recognition are important and who has an aversion to disappointing others. As a result Mr. Gorlick has difficulty with boundaries. As Dr. Rutner testified:²

He can't say no because his sense of worth in his personality structure is tied up with pleasing people, making them happy, rescuing them, taking responsibility, being a good guy.

So Mr. Gorlick found himself in a position where his dealings with both his mom, his wife and kids and [D.H.] were very similar people who are dependent upon him, who he doesn't want to let down, who he would feel like, would have a sense of personal failure and shame by not being able to continue to provide for them and make them happy.

46. Dr. Rutner explained the concepts of transference and counter transference. Transference is a well-studied phenomenon in psychiatry and psychology in which a patient transfers his or her feelings and emotions onto the therapist. The therapist is then seen and related to in a special and significant manner. Counter transference occurs when the therapist places his or her emotions on the client. While these concepts are well understood in the therapeutic professions,

² Transcript of Evidence of T. Rutner, March 12, 2015; page 22, lines 15-19 and page 23, lines 10-17.

Dr. Rutner noted that the same phenomenon can occur between a lawyer and a client. When counter transference happens, the lawyer can become emotionally enmeshed in the life of the client and can cross professional boundaries. Dr. Rutner was of the opinion that this is what occurred between Mr. Gorlick and D.H. Mr. Gorlick had an overwhelming need to help his client to the point that he was prepared to lend her \$100,000 of his own money and ultimately to steal money from others for her benefit.

47. Dr. Rutner provided an opinion on why Mr. Gorlick did not reach out to others, including his many friends in the profession, before he reached the point of taking trust money. Dr. Rutner stated:³

And I think all along he was in a state of denial as he was doing what he was doing, with the hope that he was going to get a Hail Mary solution to the problem and he wouldn't have to, in some way, humble himself, disgrace himself, acknowledge to himself and others that he was incapable of solving a particular problem.

48. Dr. Rutner was of the view that Mr. Gorlick had benefited from therapy and now better understood what had led him to commit multiple ethical breaches. The doctor opined that Mr. Gorlick could resume practice with conditions, including that he continue in therapy.

49. Dr. Michael Eleff also testified on Mr. Gorlick's behalf. Dr. Eleff has been practicing psychiatry in Manitoba since 1981. He saw Mr. Gorlick at Dr. Rutner's request in September 2014 for an independent psychiatric assessment. Dr. Eleff concluded that Mr. Gorlick did not suffer from an acute mental disorder or from a long-standing personality disorder. Rather, he concluded that Mr. Gorlick's behaviours arose out of the particular state or set of circumstances that he was experiencing at the time related to his mother and the break-up of his marriage. He described Mr. Gorlick as a "person who wants to please others, especially women" and that the financial pressures and guilt he was experiencing "seem to be at the foundation of this inappropriate behaviour."⁴ Dr. Eleff was of the view that the probability of these events arising

³ Transcript of Evidence of T. Rutner, March 12, 2015; page 39, lines 16-22.

⁴ Transcript of Evidence of M. Eleff, March 10, 2015; page 30 line 2- page 33 line 5.

in the future were small and that Mr. Gorlick could resume practicing with appropriate conditions.

Analysis

50. Mr. Gorlick has pleaded guilty to fifteen counts of professional misconduct. While all of the charges are serious, absent the offences of misappropriation, Mr. Gorlick would very likely be facing a penalty involving fines or a suspension. In fact, the member and the Society had agreed to a fine in respect of the November 19, 2012 citation prior to the other matters coming to light. But the misappropriations raise additional considerations since it is well-accepted in this jurisdiction that absent exceptional circumstances, the penalty for the misappropriation of trust funds is disbarment.

51. Integrity is fundamental to the practice of law. The preface to the *Code of Professional Conduct* states:⁵

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.

In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care. The lawyers of many countries in the world, despite differences in their legal systems, practices, procedures and customs, have all imposed upon themselves substantially the same basic standards. Those standards invariably place their main emphasis on integrity and competence.

⁵ *Code of Professional Conduct*, Law Society of Manitoba, page 5.

52. Since integrity is such a fundamental attribute of a lawyer, it follows that breaches of integrity must be treated very seriously. Thus disbarment is the presumptive penalty in cases of misappropriation.

53. However, there are discipline cases from several jurisdictions across Canada where lesser penalties have been imposed for misappropriation based on a finding that there were exceptional circumstances that mitigated the seriousness of the conduct. For example, in *Law Society of Manitoba v. Shawa*⁶ the member misappropriated approximately \$20,000 in trust funds. The lawyer was a recent immigrant to Canada who was forced to flee his country as a result of civil unrest. The majority of the funds that he took were given to community members who turned to Mr. Shawa for money to provide support for their relatives who were living in very difficult and dangerous situations in their home country. The panel concluded that Mr. Shawa's own life story which included losing his home, being imprisoned and having to start over in a new country, together with the fact that his fellow-countrymen were seeking funds to try to get their own families to safety, constituted exceptional circumstances. As a result the panel imposed a one-year suspension with conditions.

54. *Law Society of Upper Canada v. Elston*⁷ is another example of a situation where the panel concluded that there were exceptional circumstances. In that case the misappropriations occurred at a period of time when the lawyer was suffering with an undiagnosed bipolar disorder that included episodes of mania. This was characterized by acting irrationally and by feelings of infallibility and euphoria. It led to the lawyer displaying grandiose behaviour, buying things unnecessarily and generally over-extending himself. The lawyer recognized the problem and sought help prior to the Law Society becoming involved. In the circumstances the panel imposed a short period of suspension.

55. In *Nova Scotia Barristers' Society v. Van Feggelen*⁸ the lawyer was charged with misappropriation of almost \$30,000 in trust funds over a period of four months. Mr. Van

⁶ [2000]LSDD No.35.

⁷ 2010 ONLSHP 82

⁸ 2010 NSBS 2.

Feggelen was suffering with untreated mental health issues at the time that the defalcations arose. He was later diagnosed with depression and anxiety and put on medication. In the circumstances the panel reinstated the lawyer and allowed him to practice under conditions.

56. In the present case, Mr. Gorlick has asked this panel to find that exceptional circumstances existed at the time of his defalcations and to impose a penalty that is less than disbarment.

57. There is no value in seeking to try to define the concept of “exceptional circumstances” in any more particularity. The phrase is intentionally broad so as to allow for a common sense interpretation of the facts of individual cases to be brought to bear by the panel members chosen to adjudicate the outcome. Having considered all the evidence presented, this panel has concluded that Mr. Gorlick has not met his onus of showing that the circumstances surrounding his misappropriations rise to the level of exceptional circumstances.

58. Mr. Gorlick’s handling of the D.H. file can only be characterized as an ever escalating series of unethical decisions over a ten year period. It began with Mr. Gorlick’s failure to take any reasonable steps to advance the client’s case. It continued with the decision to act even though he was in an obvious conflict of interest. It was exacerbated by continuous lies to the client and others. It was compounded by getting the client into mortgages that she could ill-afford and involving another client in one such transaction. Finally, Mr. Gorlick “crossed the Rubicon” when he violated one of the clearest ethical obligations of a lawyer by stealing other people’s money not only to assist his client but for his own benefit as well.

59. The expert evidence of Drs. Rutner and Eleff was very valuable in explaining how Mr. Gorlick became enmeshed in D.H.’s life and why he crossed professional boundaries in a misguided attempt to keep her happy. However, understanding the psychological reason why something occurred does not justify unethical conduct. It is important to recall that Mr. Gorlick has a previous discipline history with the Society. By the time he entered his plea of guilty in November, 2011 to one charge of professional misconduct, the M.C. file had been dismissed for

delay and the D.H. file was in disarray. This should have prompted Mr. Gorlick to take steps to remedy his practice issues, but it did not.

60. Further, Mr. Gorlick recognized that he needed to address the evermore serious problems with the D.H. file. He considered approaching the Law Society and the Lawyers Assistance program but chose not to do so. Dr. Rutner explained this as Mr. Gorlick hoping for a miracle and not being able to face the humiliation of admitting what had occurred.

61. Finally, Mr. Gorlick made the decision to misappropriate trust funds. This involved the deliberate creation of false documents as well as misleading his staff and partners. A total of \$59,129.75 of the trust monies were paid to the benefit of Mr. Gorlick and his family. While it is true that Mr. Gorlick was in financial difficulty in part because he had given large sums of his own money to his client, the reality is, that he chose to take someone else's money to meet his personal commitments.

62. The panel accepts that Mr. Gorlick is unlikely to repeat these actions. He has greatly benefited from therapy and has insight into what triggered his behaviour. We take no issue with the fact that the public could be adequately protected if Mr. Gorlick was allowed to practice under strict conditions.

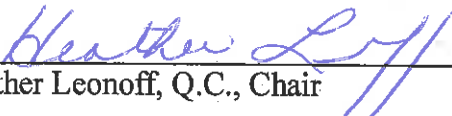
63. Nevertheless we have concluded that the appropriate penalty in all of the circumstances is disbarment. We do not find exceptional circumstances that would warrant mitigation in penalty. Instead we find that Mr. Gorlick engaged in years of unethical conduct that culminated in deliberate acts of misappropriation to the benefit of Mr. Gorlick and his family.

64. The penalty of disbarment recognizes that the sentence imposed at a disciplinary hearing does more than address the conduct of the individual lawyer. Of paramount consideration is the preservation of the public's trust in the integrity of the legal profession and its faith in its ability to govern its own members. In all of the circumstances, the panel has concluded that disbarment is the only penalty that adequately addresses the seriousness of the conduct.


Conclusion

65. This panel finds Mr. Gorlick guilty of fifteen counts of professional misconduct. Pursuant to s. 72(1)(a) of *The Legal Profession Act*⁹ we direct that he be disbarred and that his name be struck off the rolls. In the circumstances we decline to impose the penalty that had been agreed upon in respect of the November 19, 2012 citation and direct that the penalty of disbarment apply to all the counts concurrently. We note that under Rule 5-100(1) publication of this finding is mandatory. If the Society wishes to seek costs in this matter, the panel can be reconvened to address this issue.


Dated this 29 day of June, 2015



Heather Leonoff, Q.C., Chair



Wendy Stewart



Lorne Gibson

⁹ CCSM c. L107

Appendix**November 19, 2012 Citation**

THAT YOU, the said **BARRY LEE GORLICK, Q.C.**, called to the Bar in the Province of Manitoba on the 26th day of June, 1980, and entered as a lawyer in the Rolls of The Law Society of Manitoba under the provisions of *The Legal Profession Act*, and being a member of The Law Society of Manitoba, by your actions, as particularized herein, did commit professional misconduct in that:

2. While acting for your client with respect to the litigation, you failed to discharge the duty you owed to your client, the profession and the public to serve your client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation, contrary to Chapter 2 of the *Code of Professional Conduct*, adopted by the Benchers of The Law Society of Manitoba.
3. While acting for your client with respect to litigation, you failed to conduct yourself in a courteous manner when you did not answer with reasonable promptness the professional letters from opposing counsel and you were not punctual in fulfilling your commitments contrary to Chapter 16 of the *Code of Professional Conduct* adopted by the Benchers of the Law Society of Manitoba.

AND THEREFORE you did commit professional misconduct.

April 1, 2014 Citation

THAT YOU, the said **BARRY LEE GORLICK, Q.C.**, called to the Bar in the Province of Manitoba on the 25th day of June, 1981, and entered as a lawyer in the Rolls of The Law Society of Manitoba under the provisions of *The Legal Profession Act*, and being a member of The Law Society of Manitoba, by your actions, as particularized herein, did commit professional misconduct in that:

1. While acting for your client M.G. with respect to family law and commercial matters, you breached your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you misappropriated or converted to your own use, client trust funds on four (4) separate occasions, particularized as follows:

(a)	November 8, 2013	\$9,000.00
(b)	November 15, 2013	\$44,129.75
(c)	November 22, 2013	\$9,000.00
(d)	December 2, 2013	\$25,000.00

2. While acting for your client M.G. with respect to family and commercial matters, you breached your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that, for each instance of misappropriation particularized in paragraph 1 herein, you created or fabricated documents to facilitate or obfuscate your misappropriation of trust funds.

3. While acting for your client M.G. with respect to family law and commercial matters, you breached your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you caused to be issued from your pooled trust account, trust cheques payable to the Royal Bank of Canada, which you intended to negotiate in order to misappropriate or convert trust funds to your own use, particularized as follows:

(a)	December 18, 2013	\$5,000.00 (cancelled)
(b)	December 18, 2013	\$15,000.00 (cancelled)
(c)	December 20, 2013	\$5,000.00 (replacement)
(d)	December 20, 2013	\$15,000.00 (replacement)

4. While acting for your client M.G. with respect to family law and commercial matters, you breached your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* in that for the instances of intended misappropriation of client trust funds particularized in paragraph 3 herein, you created or fabricated documents to facilitate or obfuscate your intended misappropriation of trust funds.

5. While acting for your client M.G. with respect to family law and commercial matters, you breached your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you caused to be issued from your pooled trust account a cheque for \$10,060.00, payable to 6-M. Ltd. which you intended to misappropriate or convert to your own use or to the use of your client D.H.

AND THEREFORE you did commit professional misconduct.

Citation, October 15, 2014

THAT YOU, the said **BARRY LEE GORLICK, Q.C.**, called to the Bar in the Province of Manitoba on the 25th day of June, 1981, and entered as a lawyer in the Rolls of The Law Society of Manitoba under the provisions of *The Legal Profession Act*, and being a member of The Law Society of Manitoba, by your actions, as particularized herein, did commit professional misconduct in that:

1. While acting for your client D.H. (the "Client"), with respect to a family law matter between February 2003 and February 2014, you acted contrary to Rule 3.2-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you failed to provide courteous, thorough and prompt service to the client.
2. While acting for your client D.H. (the "Client"), with respect to a family law matter between February 2003 and February 2014, you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you misled the Client by representing to the Client that you were taking active steps to advance her matter, that the opposing litigant was vigorously defending the proceedings and that certain results had been achieved on the Client's behalf when all of such representations were untrue.
3. While acting for your client D.H. (the "Client"), with respect to a family law matter you failed to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that on or about April 9,

2010 you represented to the Royal Bank of Canada that you had initiated proceedings to enforce the Agreement on behalf of the Client, that you anticipated that the Client would receive funds exceeding \$200,000.00 by June 30, 2010 at the latest and that you anticipated a spousal support entitlement far greater than \$2,000.00 per month, when such representations were untrue.

4. While acting for your client D.H. (the "Client"), with respect to a family law matter you failed to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that on or about December 16, 2010 you represented to the Canada Revenue Agency that you were pursuing remedies against the Client's ex-husband and that there would be a court hearing in the new year, when such representations were untrue.
5. While acting for your client D.H. (the "Client"), with respect to a family law matter you failed to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that on or about November 15, 2012 you represented to a potential lender, J.C., that the Client was claiming millions of dollars and that you expected that the court proceedings would be conducted within a year, when none of such representations was true.
6. While acting for your client D.H. (the "Client"), with respect to a family law matter you failed to act with integrity contrary to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that on or about December 13, 2012 you represented to a potential lender, E.B., that you were pursuing a good and meritorious claim on behalf of the Client against her ex-husband and that you anticipated recovering millions of dollars, when none of such representations was true.
7. While acting for your client D.H. (the "Client"), with respect to a family law matter you failed to act with integrity contrary to Rule 3.4 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you continued to act in the Client's matter when there was, or was likely to be, a conflict of interest between you and the Client.

8. Between December 2012 and July 2013, you acted contrary to Rule 3.4-12 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you represented both the borrower, D.H. and the lender, E.B., in a loan transaction.

AND THEREFORE you did commit professional misconduct.