

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**AVALINE JANINE WIDMER THRUSH**  
- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**DECISION**

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**THE LEGAL PROFESSION ACT**

**DECISION**

1. This matter was heard in the offices of The Law Society of Manitoba, 219 Kennedy Street, Winnipeg, Manitoba on Thursday, June 4, 2015 commencing at 3:30 p.m.
2. The panel consisted of Douglas Bedford, Chairperson, Mr. Brian Pauls and Mr. Jim Wolfe.
3. The Law Society of Manitoba was represented by Ms. Darcia Senft.
4. The member, Ms. Avaline Janine Widmer Thrush, was present with her spouse and was represented by Mr. Faron Trippier.
5. Mr. Bedford called the meeting to order at 3:30 p.m. and declared that a quorum of the Discipline Committee of the Law Society of Manitoba (hereinafter "The 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. Pauls hold current practicing certificates. Mr. Wolfe is one of the Public Representatives appointed to the Discipline Committee.
6. Reading of the charge was waived by Ms. Widmer Thrush.
7. Ms. Widmer Thrush confirmed that she is not the member of any other Law Society.

8. The panel was advised that the matter was proceeding by way of an Agreed Statement of Facts and a joint recommendation as to disposition and costs. Ms. Senft tendered as Exhibit No. 1 the Citation dated November 22, 2014 that had been served upon Ms. Widmer Thrush and the Agreed Statement of Facts dated June 4, 2015.

9. The Agreed Statement of Facts presented to the panel was brief. The critical paragraph, set out under the heading “Admissions”, reads as follows:

Ms. Widmer Thrush has reviewed the Citation and the particulars contained therein. She admits that the witnesses available to the Society would, if called, testify in accordance with the facts contained in the Citation. Ms. Widmer Thrush and the Society tender no evidence and make no submissions on the issue of professional misconduct other than Ms. Widmer Thrush admits that the conduct hereinafter described constitutes professional misconduct.

10. The conduct which Ms. Widmer Thrush admits was unprofessional is that described in paragraphs 1, 3, 4, 5, and 6 of the Citation. In accordance with the Agreement reached with Ms. Widmer Thrush, the Society agreed not to proceed with the charge described in paragraph 2 of the Citation or the alternative charge set out in paragraph 7. In summary, the conduct alleged in the foregoing paragraphs was as follows:

1. On at least three separate occasions, while acting for three separate clients with respect to family law matters, Ms. Widmer Thrush adjourned proceedings before the Court of Queen’s Bench without the consent of opposing counsel. With respect to one of the foregoing suits, she was also alleged to have failed to respond to communications from opposing counsel, scheduled hearings before the Court without the consent of that counsel, did not cooperate with the counsel in question on the taking out of orders, encouraged her client to complain about the counsel to the Society and herself made unsupported allegations of misconduct and disparaging remarks about the counsel to the Society.
2. In the period May through August 2011, Ms. Widmer Thrush was alleged to have made an offer of employment to a student seeking to article with a law firm which offer was accepted. Ms. Widmer Thrush applied to the Society in June 2011 to be approved as a Principal and her application was denied. She did not notify the student in question for some two months thereafter. Rather, she is alleged to have re-applied to be approved as a Principal a month after her initial application had been denied and in filing the second application, she is alleged to have advised the Society that she now, a month later, found that her circumstances had “changed” in that there was now a student who wished

to article at her firm. This was untrue as this was not a “change” from the relevant circumstances that existed at the time she filed her initial application..

3. At some date in 2010 or early 2011, Ms. Widmer Thrush was alleged to have lent money, \$7,650.00, to a client in a family law matter for the purpose of assisting the client in question to purchase assets from the Trustee in Bankruptcy of the client’s estranged spouse. She did not recommend that the client obtain independent legal advice with respect to this loan. The funds in question were alleged to have been sent directly to the Trustee in Bankruptcy without the knowledge of the client and subsequently were billed to the client as a disbursement on an account rendered to the client. With respect to the same client, Ms. Widmer Thrush was alleged to have failed to communicate with her client in a timely fashion, took steps in representing her client which were not of benefit to the client but which resulted in significant legal fees and disbursements, failed to inform her client on two occasions that legal costs had been awarded against the client by the Court, which costs Ms. Widmer Thrush paid without the client’s knowledge at the time and then subsequently billed to the client as disbursements, and gave questionable advice to the client as to the wisdom of accepting a proposed offer of settlement and as to the likely outcome of the case if it proceeded to be litigated.

11. There was no explicit statement in the Agreed Statement of Facts that Ms. Widmer Thrush admitted that she had done the things she was alleged to have done. Her admission, quoted above, was that the witnesses whom the Society was prepared to call would swear that she had. Her counsel, moreover, properly cautioned the panel from making any assumptions about Ms. Widmer Thrush’s actions outside of what was provided in the Agreed Statement of Facts. For example, he noted that there was no evidence, or admission, that Ms. Widmer Thrush profited from the loan to the client.

12. Although it was not explicit, the panel was persuaded that Ms. Widmer Thrush was in fact agreeing that she had committed the acts described in paragraphs 1, 3, 4, 5 and 6 of the Citation as summarized above. We note that the Agreed Statement of Facts includes the statement, at paragraph 9, that “Ms. Widmer Thrush has agreed to enter a plea of guilty to charge nos. 1, 3, 4, 5, and 6 contained in the Citation.” The only rational conclusion we can draw from a member’s agreement to plead guilty to charges filed against her is that she is in effect admitting that she has committed the acts in question.

13. We have no difficulty concluding that the acts in question constitute professional misconduct and the parties were so advised on June 4.

14. Counsel submitted jointly that the appropriate penalty is a fine of \$3,000.00 plus payment of costs in the amount of \$5,500.00. Penalty and costs, they submitted further, are to be paid monthly in the amount of \$200.00 per month commencing on July 1, 2015. No order of publication was sought, though there is to be notice to the profession.

15. The panel was advised that Ms. Widmer Thrush had been convicted on one prior occasion, in January 2012, for breach of a trust condition and had been fined \$3,000.00.

16. No explanation was offered in the Agreed Statement of Facts or by counsel as to why Ms. Widmer Thrush did the things she now admits were unprofessional. The panel does not know, for example, the extent of the prejudice caused to opposing counsel and her or his client as a consequence of adjournments of Court hearings without consent. Was there inconvenience only or some financial loss? The panel does not know whether Ms. Widmer Thrush profited from the loan made to her client. Nor does the panel know whether or not the purchase of the assets in question was a significant benefit to the client. The panel was not told whether Ms. Widmer Thrush intended to mislead the Society in July 2011 when she filed a second application to be approved as a principal or was merely confused, careless or forgetful of what she had said and done a month earlier. Additional advice from counsel or in the Agreed Statement of Facts would have been of much use in our assessment of the fitness of the recommended penalty.

17. We observed to counsel on June 4 that we found the penalty to be on the “low end” of an acceptable range in light of the number of infractions to which Ms. Widmer Thrush was pleading guilty, the fact of a fairly recent conviction for a not dissimilar offence and in light of the penalties awarded against other members in recent years for such actions as delay, misleading clients, failing to follow a client’s instructions and loaning money to a client without independent legal advice and for an improvident charge. The cases we reviewed indicated that fines of \$5,000.00 to \$7,000.00 would arguably have been more appropriate.

18. Ms. Senft advised that the Society was satisfied that the recommended penalty and costs constituted adequate deterrence to Ms. Widmer Thrush and were consistent with the general goal of the Society to maintain public confidence in the ability of the Society to discipline those members who commit unprofessional acts. She observed that Ms. Widmer Thrush’s decision to enter into a plea bargain had spared her clients and other members from having to testify.

19. Mr. Trippier reminded us that there was no admission or agreed fact to the effect that Ms. Widmer Thrush had misled the Society. He attributed her problems to the stresses of practicing in a sole practice in a rural community where there is less opportunity for mentoring by senior lawyers. He conceded that she could and should have shown “more courtesy”, “more care” and “better judgment” in her handling of the matters that were described in the Citation. He assured the panel that Ms. Widmer Thrush will not repeat the behavior we were called upon to review.

20. We are mindful of the importance of Discipline Committees accepting plea bargains negotiated by experienced counsel such as those appearing in this matter unless they have “good and cogent reasons” for rejecting the bargain and consequently we advised the parties on June 4 that we accepted the recommended penalty and accordingly, ordered that Ms. Widmer Thrush be fined the sum of \$3,000.00 and that she pay the sum of \$5,500.00 as a contribution to the Society’s costs, the fine and costs to be paid at the rate of \$200.00 per month, commencing on July 1, 2015, provided that in the

event of default in any payment, which default not being remedied forthwith by payment of cash or money order, the entire balance then owing is to be paid within 30 days of the date of default. We make no order as to publication.

21. We advised on June 4 that in light of the short time we had to read the Agreed Statement of Facts that we would prepare written reasons.

22. Ms. Widmer Thrush was called to the Bar in Manitoba in 1997. She has been practicing law for 18 years now. She qualifies as “experienced counsel”. Adjourning matters before the Court without consent, making inaccurate statements to the Society and lending funds to a client without the client’s consent and independent legal advice are clearly not actions that members of the Society and the public expect of experienced counsel. They constitute obvious breaches of the *Code of Professional Conduct* adopted by the Benchers of the Society. Such actions by experienced counsel sometimes reflect decisions made in haste, sometimes in periods of stress and frustration and sometimes as a consequence of a false sense that the ‘outcome’ will justify the ‘means’ employed to obtain it. We do not know with respect to Ms. Widmer Thrush, outside of her counsel’s reference to the stresses of her practice, which of these explanations applies to her conduct. However, we certainly do expect, based on her counsel’s assurances, that she has taken steps to address the factors that led to these charges and in future she will meet the standards expected of experienced counsel.

23. We thank counsel for their work on June 4. It was evident that counsel were working to the ‘last minute’ to agree on a plea bargain and we accept that this resulted, likely, in a shorter set of agreed facts than might otherwise have been the case. The supporting Authorities prepared by Ms. Senft and approved by Mr. Trippier were most helpful.

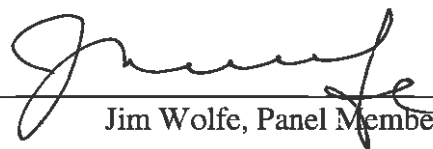
These written reasons signed the 7<sup>th</sup> day of August, 2015.



Douglas A. Bedford, Chairperson



Brian Pauls, Panel Member



Jim Wolfe, Panel Member